SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 558

AMERICAN TRUCKING ASSOCIATIONS, INC., SOUTHERN MOTOR CARRIERS' RATE CONFERENCE, FLAMINGO TRUCK LINES, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, LEGH R. POWELL AND HENRY W. ANDERSON, RECEIVERS OF THE SEABOARD AIR LINE RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action. No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., 1424 16th Street, N. W., Washington, D. C.; Southern Motor Carriers' Rate Conference, 873 Spring Street, N. W., Atlanta, Ga.; Flamingo Truck Lines, Inc., Second and Pearl Streets, Jacksonville, Fla.; Hunt Truck Lines, 708 Whiting Street, Tampa, Fla.; Great Southern Trucking Co., 1863 Clarkson Street, Jacksonville, Fla.; Central Truck Lines, Inc., 1001 Jackson Street, Tampa, Fla.; K & L Transportation Company, Inc., 777 West Whitehall Street, S. W., Atlanta, Ga.; St. Johns River Line Company, 10 South Newman Street, Jacksonville, Fla., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT TO SET ASIDE ORDERS OF THE INTERSTATE COMMISSION—Filed October 21, 1943

To the Honorable Justices of the District Court of the United States for the District of Virginia:

The plaintiffs being aggrieved and injured by certain orders of the Interstate Commerce Commission, complain to this Honorable Court for the purpose of having said orders set aside, and in support thereof, respectfully show unto the Court that:

[fol. 5] I

Jurisdiction

Jurisdiction to review and set aside orders of the Interstate Commerce Commission is vested in this Court in and by an act of Congress, known as the District Court Jurisdiction Act, 38 Stat. L. 220; 28, U. S. C. A. 41, Sub. 8, 28, 43-48 and particularly the Act of Oct. 22, 1913, 38 Stat. 219.

II

Plaintiffs

Plaintiff American Trucking Associations, Inc., is a corporation under the laws of the District of Columbia with general offices at 1424 16th Street, N. W., Washington, D. C., and it is the national organization of the trucking industry and is owned and maintained by said industry, and appeared and participated in the proceedings before the Interstate Commerce Commission involving matters herein complained of, on its own behalf and on behalf of its members, who constitute a class too numerous to mention and for whom it customarily appears in proceedings before the Interstate Commerce Commission and before the courts.

Plaintiff Southern Motor Carriers' Rate Conference, is a corporation under the laws of the State of Georgia, with general offices at 873 Spring Street, N. W., Atlanta, Georgia, and it is the commerce conference and tariff publishing agent for its members in southeastern states and it is owned and maintained by said members, and it appeared and participated in the proceedings before the Interstate Commerce Commission involving the matters herein complained of, on behalf of its members who constitute a class too numerous to mention, and it customarily appears in proceedings before the Commission to represent the interests of its members.

Plaintiff Flamingo Truck Lines, Inc., is a common carrier of property by motor vehicle with general offices at Second and Pearl Streets, Jacksonville, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a cer- [fol. 6] tificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff Hunt Truck Lines is a common carrier of property by motor vehicle with general offices at 708 Whiting Street, Tampa, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business

and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff Great Southern Trucking Co., is a common carrier of property by motor vehicle with general offices at 1863 Clarkson Street, Jacksonville, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff Central Truck Lines, Inc., is a common carrier of property by motor vehicle with general offices at 1001 Jackson Street, Tampa, Florida, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff K & L Transportation Company, Inc., is a common carrier of property by motor vehicle with general offices at 777 West Whitehall Street, S. W., Atlanta, Georgia, and operates in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

Plaintiff St. Johns River Line Company is a common carrier of property by motor vehicle with general offices at 10 South Newman Street, Jacksonville, Florida, and operates [fol. 7] in interstate commerce between various points and over various routes involved in and affected by the proceedings and orders of the Interstate Commerce Commission and complained of herein, and said company has a large investment in its business and operates by virtue of a certificate of convenience and necessity issued by the Interstate Commerce Commission.

The aforesaid plaintiffs have a common interest in the subject matter of this complaint and in obtaining the relief sought.

III

Preliminary Statement

There is attached to the complaint an appendix which is made a part hereof and for convenience numerous exhibits therein are referred to instead of being cited or quoted in the body of the complaint.

Plaintiffs show the Court that:

The numerous separate applications of the railway for certificates of convenience and necessity to engage in motor carrier operations, as shown by Exhibits "A-1" to "A-3," constitute in fact and substance one application for integrated operating rights.

The repetition of applications for rights disclosed a substantial program for the conduct of highway operations generally paralleling the railway system and involving several states, and that the separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing by the Commission.

The extent and scope of the proposed operations were disclosed to the Commission through numerous applications, as shown by Exhibits "A-2" and "A-3," prior to any action by the Commission referring the applications to separate Joint Boards for separate hearing and determination.

The Commission disregarded the disclosure of the extent and scope of the pending applications considered together, and arbitrarily and capriciously assigned the several separate applications for separate hearings by dockets, states and segments of highways, before several Joint Boards, as shown by Exhibits "B-1" and "B-2," which exhibits represent typical orders of the Commission appointing and designating Joint Boards for the hearing of said applications.

[fol. 8] The Commission arbitrarily and capriciously made alleged findings without evidence and failed and refused to perform its statutory duties and exceeded its jurisdiction in exempting the railroad from the statutory provisions of the Interstate Commerce Act, relating to the publication of tariffs.

The Seaboard Air Line Railway Company, through its receivers and by numerous applications, applied to the In-

terstate Commerce Commission for authority to conduct operations by motor vehicle and the said Commission granted all of said applications without having conducted a proper hearing to develop facts required for the required statutory findings.

The said Commission failed and refused to hold hearings as required by law and improperly and unlawfully delegated the hearing of said applications to several Joint Boards, and that by reason of the lack of jurisdiction and refusal of said Joint Boards to hear the evidence, plaintiffs were denied a fair and proper hearing.

IV

Orders Complained of

(a) The orders and matters complained of involve a series of proceedings before the Interstate Commerce Commission as shown by Exhibit "A-2."

All of the proceedings before the Interstate Commerce Commission are titled Seaboard Air Line Railway, Legh R. Powell, Jr., and Henry W. Anderson, Receivers—Applications.

The docket numbers of the Interstate Commerce Commission are MC 86687 and MC 86687 Sub Nos. 1 to 10, inclusive, and MC 86687 Sub. Nos. 15, 18 and 19. The published reports appear in 17 M. C. C. 413; 21 M. C. C. 773; 28 M. C. C. 5 and 34 M. C. C. 441.

All of the dockets, as aforesaid, represent applications by the Seaboard Air Line Railway for certificates of convenience and necessity authorizing said railway to conduct operations as a common carrier by motor vehicle, and taken together, they involve the states of Virginia, North Carolina, South Carolina, Georgia and Florida.

The dockets represent separate applications for certificates of convenience and necessity for segments of highway and were heard by several Joint Boards and sub-
[fol. 9] sequently and without further hearing or evidence the Commission reversed or modified the Joint Boards' reports.

Upon consideration of various conflicting and inconsistent recommended reports and orders by the several Joint Boards the Commission reviewed the applications and found the railway applicant entitled to a certificate of con-

venience and necessity, subject to certain conditions which were prescribed and subject to the continuing jurisdiction of the Commission to change or modify its orders.

A certificate was issued by the Commission on November 30, 1942 (Exhibit "T"), pursuant to orders of July 6, 1942, 34 M. C. C. 441 (Exhibits "S").

The application by the railroad to the Commission in Docket MC 86687 Sub 4 under date of January 7, 1937, is typical, and the pertinent provisions thereof are attached hereto and identified as Exhibit "A-1."

A summary of the several applications showing the docket numbers, the points involved, dates of filing, dates of original hearings, dates of consolidated hearings, dates of Joint Board original orders, dates of Commission's original order, date of Commission's first modified order, date of Commission's second modified order, and date of the certificate, is attached hereto and identified as Exhibit "A-2."

A map showing the highway segments covered by the various applications involved in these proceedings, together with the highway segments covered by other applications which have been made by the railroad, is attached hereto and identified as Exhibit "A-3."

(b) Plaintiffs participated in the proceedings before the Joint Boards and before the Commission in the hearings concerning the applications and said participation is evidenced by the entering of appearances at the original hearing and further hearing, in accordance with the applicable rules of procedure of the Commission, and the appearances and participation is further evidenced by formal petitions for intervention as indicated by Exhibit "G."

Typical orders of the Commission permitting appearances and interventions are attached hereto and identified as Exhibits "H," "I" and "J."

A chronological summary of the proceedings involving the various applications, hearings, exceptions, petitions, motions and orders is attached hereto and identified as Exhibit "U."

[fol. 10] In addition to the various applications and orders covered by this complaint, various other applications were filed as shown by Exhibits "A-3" and "V."

V

(a) The appointment and designation of several Joint Boards composed of representatives of only one or two states to hear the several applications which in the aggregate involved five states, was contrary to the provisions of the Interstate Commerce Act, the pertinent provisions of which are as follows:

> "Sec. 205(a). The Commission shall, when operations of Motor Carriers or brokers conducted or proposed to be conducted involve not more than three states, and the Commission, may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three states, refer to *a* Joint Board for appropriate proceedings thereon, any of the following matters arising in the admission of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Application for certificate, * * *. The Commission, in its discretion, may also refer to a Joint Board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this part. The Joint Board to which any such matter is referred *shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matter are or are proposed to be conducted* * * * in acting upon matters so referred, Joint Boards shall be vested with the same rights, duties, powers and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: * * * " (Italics supplied.)

In view of the fact that the several applications involve more than three states, the statutory provisions required the Commission to either conduct a hearing itself or to refer the matter to *a* Joint Board composed *"solely of one member from each state within which the motor carrier or brokerage operations involved in such matters are or are proposed to be conducted."*

In failing and refusing to either conduct the hearings itself or to refer the applications to a properly constituted

Joint Board, the Commission acted arbitrarily and capriciously.

(b) The Commission and the Joint Boards failed and [fol. 11] refused to hear and receive evidence upon which the statutory findings must be made and said findings were either not made or made without evidence.

The Interstate Commerce Act provides as follows:

> "Sec. 213(a)(1). Whenever a consolidation, merger, purchase, leased operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall, notify the Governor of each state in which any part of the properties or operations of the carriers involved in which the proposed transaction is situated, and also such carriers and the applicant or applicants and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing * * *: Provided, however, that if a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of Section 5(8) of Part I, the Commission *shall not enter such an order unless it finds* that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations *and will not unduly restrain competition.*"
>
> (Italics supplied.)

(Section 213(a)(1) was enacted in 1935, amended in 1938, repealed in 1940 and its provisions were, in substance, reenacted in 1940 as parts of Section 5 of the Interstate Commerce Act.)

The pertinent provisions of Section 5 as amended in 1940 are as follows:

> "Section 5(a) (b) * * *: Provided, that if a carrier by railroad subject to this part, or any person which is controlled by such a carrier or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction

involving a motor carrier, the Commission *shall not enter such an order unless it finds* that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and *will not duly restrain competition.*"

(Italics supplied.)

In failing and refusing to receive plaintiff's evidence the Commission disregarded its statutory duty and acted arbitrarily and capriciously.

(c) The Commission disregarded the provisions of Section 205 respecting hearings by the Commission or by prop-
[fol. 12] erly constituted Joint Boards and disregarded the provisions of old Section 213 and new Section 5, respecting the required findings in cases involving railroad operations of motor carriers, and disregarded the statutory directions of the National Transportation Policy, and arbitrarily and capriciously treated each of the railroad's applications as a separate operation and directed hearings thereon by limited, restricted and improperly constituted Joint Boards and thereby denied the protestants a fair and reasonable hearing; and the Commission failed and refused to receive evidence and to require the production of evidence, and to conduct the hearings in a manner required by statute to enable the Commission to develop the essential information and facts from which the Commission could make the findings required by statute.

(d) In addition to the specific provision of Section 205, 213 and 5, the National Transportation Policy requires that all specific provisions be administered in relation to said policy. The National Transportation Policy is as follows:

It is hereby declared to be the National Transportation Policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without

undue discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several states and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.*

(Italics supplied.)

The Commission acted arbitrarily and capriciously in failing and refusing to fairly and impartially give effect to all of the applicable provisions of the Interstate Commerce Act.

VI

In directing the hearing of the several applications by several separate and limited Joint Boards, the Commission denied the protestants before the Commission, plaintiffs [fol. 13] here, a fair and reasonable hearing in that they were deprived of an opportunity to show the extent and scope of the operations proposed to be conducted by the railroad; the competitive effect of said proposed operations; the extent and scope of public service being rendered by protestants; their ability to perform the service proposed to be conducted by the railroad as a motor carrier operator; and they were further deprived of a fair and reasonable hearing in that protestants were denied an opportunity to show that the operations proposed to be conducted by the railroad and the manner of conducting the proposed operations would result in undue restraint of competition.

Each separate Joint Board refused to hear the protestants before the Board with respect to the services which they were rendering and were able and willing to render, and refused to hear and consider the competitive effect and restraint of competition which would flow from the operations represented by the aggregate of the applications of the railway.

Protestants before the Joint Board put in issue the jurisdiction of the Joint Boards and the rulings of the separate

Joint Boards respecting jurisdiction and hearing of evidence relating to other applications, and the effect of such other applications on protestants.

The rulings of the Joint Board are illustrated by typical excerpts from the record and shown in Exhibit "B-3," attached hereto.

The refusal of the Joint Boards to hear evidence and consider the relationship of other pending railroad applications was arbitrary and capricious and denied protestants an opportunity to test pertinent matters having to do with public convenience and necessity, destructive and wasteful competition, and restraint of competition, and were arbitrary and capricious.

VII

When the motor carrier protestants were advised that each separate Joint Board would restrict its inquiry to the particular segments of highways allocated to it by the Commission for hearing and would refuse to admit evidence respecting the pendency of other applications and the effect of operations over and through the combined applications, and were further advised that the railway applicant proposed to conduct through operations involving more than one [fol. 14] application or segment of highway, then protestants advised the Commission through motions and petitions that the hearings were being conducted improperly through Joint Boards and through improperly constituted Joint Boards, and prayed for a consolidated hearing and put these matters in issue before the Commission. See Exhibits "C," "D" and "E." The Commission arbitrarily and capriciously denied the motions and petitions for consolidated hearings. See Exhibit "F."

Although protestants' motions for consolidated hearing were first filed with the Commission on June 11, 1937, by wire, and June 14, 1937, by formal petition, as shown by Exhibits "C" and "D," and repeated January 27, 1938, as shown by Exhibit "F," the Commission arbitrarily and capriciously disregarded the motions of June 11 and 14, 1937, until the Joint Board hearings had been closed on most of the applications and finally denied the motion of January 27, 1938, for consolidation and further hearing, on February 16, 1938, as shown by Exhibit "F."

By reason of the refusal of the Joint Boards to consider the relationship of the several pending railroad applica-

tions, as shown by Exhibits "A-3" and "N", and the failure and refusal of the Commission to grant protestants' motions of June 11 and 14, 1937, and January 27, 1938, Exhibits "C," and "D" and "E," the hearings before the Joint Boards were concluded on a record which denied protestants a fair and reasonable hearing and an opportunity to present their evidence.

VIII

In addition to the refusal of the Joint Board to consider the relationship and effect of other pending railroad applications, and the refusal of the Commission to hear the case or to require it to be heard by a properly constituted Joint Board, the Joint Boards refused to hear *the* consider evidence pertinent to the issue of public convenience and necessity. The further matters which the Joint Boards refused to hear and consider related to:

1. The complete cost of the proposed truck operations.
2. The tonnage to be handled by truck.
3. The revenues to be derived from the truck operations.
4. The segregation of rail and motor expenses and revenues.
5. The economic effect on existing motor carriers.

[fol. 15] 6. The willingness of ability of existing motor carriers to perform the service.
7. Destructive competition flowing from subsidized truck operations.
8. The refusal of the railroad to enter into arrangements with the independent motor carriers.
9. Traffic to be diverted from existing independent motor carriers.
10. The motor carrier operations of the Railway Express Agency.
11. The intention of the railroad to consolidate its motor carrier operations.
12. The reasonableness of proposed rate and accounting practices.
13. The distinction between railroad convenience and public convenience.

By reason of the arbitrary and capricious refusal of the Joint Boards and the Commission to consider these matters

protestants were unable to defend themselves against unnecessary, unfair and destructive competition, and undue restraint of competition, and were denied a fair and reasonable hearing.

By reason of the failure and refusal of the Joint Boards to hear and consider, as hereinbefore set forth, evidence bearing on the usual criteria for showing of public convenience and necessity, the Joint Boards and the Commission arbitrarily, capriciously and unlawfully adopted the test of railroad convenience, as distinguished from public convenience and necessity, as a basis for the granting of motor carrier operating rights to railroad applicants.

IX

Upon the hearing of the several applications by the several Joint Boards, as aforesaid, certain reports and recommended orders were submitted to the Commission by the respective Joint Boards. These reports and recommended orders granted certain operating rights sought by the applications and denied the applications in part and included findings and statements of the reasons therefor. The report and recommended order of Joint Board No. 103, covering Dockets MC-86687 Sub 2 and Subs 4 to 6, is typical and is attached hereto and identified as Exhibit "K." The report [fol. 16] and recommended order of the Joint Board, as shown by Exhibit K, recommended the granting of part of the rights applied for in Sub 4 and recommended denial of the rights sought in Subs 2, 5 and 6. Upon the filing of exceptions by both applicant and protestants, respecting the report and recommended orders of the various Joint Boards, Division 5 of the Commission took jurisdiction and without further hearings issued a consolidated report and order covering dockets Subs 1 to 10, 15 and 18, which report and order was issued July 11, 1939 (reported in 17 M. C. C. 413), and is attached hereto and identified as Exhibit "L."

The report and order of Division 5, Exhibit "L," reversed the Joint Boards insofar as said Boards had recommended denial of any of the applications, and granted certificates of convenience and necessity to the railroad, subject however to the following conditions:

"(1) The service by motor vehicle to be performed by applicants shall be limited to service which is aux-

iliary to or supplemental of the service of the Seaboard Air Line Railway.

"(2) Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway.

"(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

"(4) Such further specific conditions, as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway."

In overruling the Joint Boards and in granting the certificates, Division 5 reaffirmed its order of February 16, 1938 (Exhibit "F") denying protestants' petitions for consolidated hearing and further hearing, the Commission found:

1. "While the evidence indicates that in most instances there is adequate motor-carrier service over the considered routes it is also clear that applicant's proposed service will expedite deliveries of less than carload shipments which now move by railroad. The proposed operations should result in improved service with respect to merchandise, as well as carload traffic, and the [fol. 17] record indicates that applicants will be able to effect some economies through elimination of train stops and reductions of the number of cars in their trains."

2. "There seems little question as to the proposed railroad-truck co-ordinated service being in the public interest nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers."

(For full report see Exhibit "L.")

The foregoing quotations from the decision of Division 5 constitute the only findings contained in the entire report. The balance of the report (Exhibit "L") consists of a

recitation of the applications and the contentions of the parties. The Commission did not find that the proposed operations would not be injurious to protestants, however the Commission made a negative finding:

"* * * nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers."

The action of Division 5 in overruling the Joint Boards and in granting the certificates without a consolidated hearing was arbitrary and capricious, and the negative finding was arbitrary and capricious in that such negative finding was only possible by reason of the fact that the rulings of the Commission, denying a consolidated hearing and the refusal to hear protestants' evidence, deprived protestants of a fair hearing and deprived the Commission of a record upon which contrary affirmative findings might have been made.

The action of Division 5, in finding that there already existed "adequate" motor carrier service, and then finding that the railroad applicant had established public convenience and necessity, was arbitrary and capricious and exceeded the power of the Commission in that the Commission arbitrarily substituted railroad convenience for public convenience.

X

(a) Following various petitions for reconsideration by the full Commission and upon oral argument before the full Commission, but without further hearing or the receipt [fol. 18] of further evidence, the full Commission reversed the order of Division 5 (Exhibit "L") and by order dated January 24, 1941, reported in 28 M. C. C. 5 (Exhibit "M"), abolished Condition No. 3, providing for a prior or subsequent movement by rail, and imposed a series of so-called key point restrictions, which in effect provided that through operations by truck might not be conducted through or beyond more than one "key point."

The full Commission designated the key point restrictions on the consolidated operations represented by the several applications of the railway without a record covering such matters. Upon the filing, by the railway, of a petition for modification of the key point restrictions prescribed

by the full Commission, the Commission ordered the proceedings reopened for further hearing. The order for further hearing was dated July 25, 1941, and is attached hereto and identified as Exhibit "N."

(b) On October 3, 1941, the Commission assigned the reopened proceedings for hearing on November 12, 1941, subject to the following limitation on the scope of the hearing:

> "The above-entitled matters are hereby assigned for further hearing solely to determine whether Condition 3 as set forth in the prior report, 28 M. C. C. 5 should be modified, and if so, the extent of such modification * * *." See Exhibit "O."

The order of October 3, 1941 (Exhibit "O"), assigned the reopened proceedings for hearing before an examiner of the Commission, as distinguished from a Joint Board; and said reopened proceedings, consolidated for the first time Docket MC-86687 and MC-86687 Subs. 1 to 10, 15, 18 and 19.

The action of the full Commission in limiting the scope of the consolidated and reopened proceedings, to the matter of modification of "key points" was arbitrary and capricious and denied protestants a fair and reasonable hearing in that this was the first and only consolidated hearing at which any of the issues repeatedly raised by plaintiffs could have been presented. In finally recognizing that the several applications should be consolidated and heard by the Commission on a consolidated record, the Commission did what protestants had been trying to get it to do for five years, however the limitations put on the scope of the issues were arbitrary and capricious and perpetuated the errors of the prior Joint Board hearings and denied protestants a fair and reasonable hearing.

XI

[fol. 19] After the Commission had consolidated the dockets and reopened the hearing, the United States Department of Justice filed, on October 27, 1941, a petition for intervention, and said petition was granted by the Commission by order dated October 28, 1941.

The petition of the Department of Justice, Anti-Trust Division, under date of October 27, 1941, by Thurman Arnold, was in part as follows:

> "This Division is advised that railroad companies seeking through ownership and direct operation of

truck lines and through operation jointly between railroads of the Railway Express Agency, to bring about a monopoly and strangulation of the independent trucking industry. This, it is contended, will result if railroads are permitted to enter the motor carrier field without restriction because the large resources of the railroads, including railroad stations, employes, soliciting forces, and their ability to cut rates and absorb losses, would give independent motor carriers little chance to survive.

"This issue is, I am informed, involved in the application of the Seaboard Air Line Railway, set for hearing November 12, 1941, at Raleigh, North Carolina. I would like to request that representatives of the Antitrust Division be given the privilege of intervening before your Commission in this case."

At the reopened and consolidated proceedings, the hearings on which were held at Raleigh, North Carolina on November 12 and 13, 1941, the United States Department of Justice, American Trucking Associations, Southern Motor Carriers' Rate Conference and various individual motor carriers appeared and participated in the proceedings.

The consolidated proceedings involved applications covering approximately 1337 miles of highway routes in five states.

The examiner refused to permit protestants and interveners to introduce evidence or require applicant to produce evidence on the following subjects.

1. Less-carload traffic.

2. Offers of motor carriers to establish joint rates and routes.

3. Rates to be charged.

4. Profitableness of the proposed operations.

5. Tonnage involved.

6. Cost of operations.

[fol. 20] 7. Segregation of rail and motor operations.

8. Segregation of interstate and intrastate traffic.

9. Use of railroad facilities and employes.

10. Alternative certificate conditions.

11. Co-ordination of service with independent motor carriers.

12. Competition and monopoly.

Upon the refusal of the examiner to permit protestants to examine applicants' witnesses with respect to traffic and revenues involved in the proposed operations and the diversion of traffic from existing motor carriers, and upon refusal of the examiner to permit protestants' witnesses to testify regarding these subjects, protestants made an offer of proof and further requested the continuation of the hearing in order to give protestants an opportunity to prepare and develop testimony to meet the issues raised by applicants' witnesses and concerning the conduct of the proposed operations, and to show the manner in which protestants would be injured by such operations. Protestants requested that the hearing be held open until the Commission could rule on the exceptions taken to the examiner's rulings and further requested that the hearing be held open for a period of 60 days to enable protestants to further develop and present evidence to show the injurious effect on them of the proposed operations, as disclosed by the applicant. All of these motions were denied by the examiner.

Upon the refusal of the examiner to permit inqury or testimoney respecting the foregoing subjects the Department of Justice and the American Trucking Association and individual carrier protestants put these rulings in issue and filed petitions with the Commission requesting further proceedings and the admission and production of evidence. Said petitions were dated December 5, 1941, and are attached hereto and identified as Exhibits "P" and "Q."

On January 21, 1942, the Commission arbitrarily and capriciously denied, without a hearing, the petitions of the American Trucking Associations and the Department of Justice for a further hearing, admission of evidence and production of evidence. Said order is attached hereto and identified as Exhibit "R."

On July 6, 1942, the full Commission issued its report and order on the further hearing, which hearing was limited [fol. 21] to the issue of modification of key points, and

said report and order is attached hereto, identified as Exhibit "S" and is reported in 34 M. C. C. 441.

The order of July 6, 1942 eliminated the conditions prescribed by Division 5 in its order of July 11, 1939, reported in 17 M. C. C. 413 (Exhibit "L") which provides for a prior or subsequent movement by railroad, and modified the key point restrictions prescribed by the full Commission on January 24, 1941—28 M. C. C. 5—Exhibit "M." In the report of July 6, 1942, the full Commission found:

> "At the hearing numerous motions were made by protestants and intervenors but they need not be considered here. They were renewed by petitions, following the close of the hearing, asking for reopening and rehearing of the proceedings and admission and production of further evidence. They were denied by our order of January 21, 1942."
>
> . . . . . .
>
> "The modifications requested will in no way change the character of the service applicants are authorized to perform as a motor carrier; nor will they adversely effect the operations of existing motor carriers, nor restrain competition in the motor carrier field."

The action of the full Commission in consolidating the application and holding a consolidated hearing for the sole purpose of enabling the applicant railroad to show that key point restrictions should be modified with reference to the consolidated applications and at the same time denying protestants an opportunity to show the competitive effect of the consolidated operations and the removal or modification of key point restrictions was arbitrary and capricious and denied protestants a fair and reasonable hearing.

The purported findings that the proposed operations would not "adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field" is arbitrary and capricious and wholly without support for the reasons that the Commission consistently and repeatedly refused to hear the applications jointly and in a manner which would permit protestants to offer evidence relating to injury; and when the Commission finally heard the cases on a consolidated record, it refused to receive evidence and to require the production of evidence.

[fol. 22] XII

The Commission, by Division 5, by order dated July 11, 1939, Exhibit "L," reported in 17 M. C. C. 413, authorizing a certificate to the railroad applicant, conditioned its order as follows:

> "Upon compliance by applicants with Sections 215 and 217 of the act and our rules and regulations thereunder * * *."

Section 215 covers insurance requirements, and Section 217 covers tariffs of common carriers by motor vehicle.

The full Commission, through its orders dated January 24, 1941, Exhibit "M," reported in 28 M. C. C. 5, repeated the requirement for compliance with Sections 215 and 217. However, the order of the full Commission under date of July 6, 1942, Exhibit "S," reported in 34 M. C. C. 441, omitted the requirement for compliance with the provisions of Section 217, covering the publication of motor carrier tariffs.

The Commission arbitrarily and capriciously failed and refused to require the railroad applicant to comply with the provisions of Section 217 of the Interstate Commerce Act relative to the filing and publication of motor carrier tariffs, and permitted said railroad applicant to conduct motor carrier operations under its railroad tariffs, and has thereby subjected plaintiffs to unfair, unreasonable and discriminatory competition in that the railroads and regulations of the Commission subject independent motor carriers to many restrictions respecting the reasonableness of rates and the publication of quantity rates, which the Commission does not apply in the case of tariffs published by railroads.

XIII

The Commission by its orders of July 11, 1939 (Exhibit "L"), January 24, 1941 (Exhibit "M"), July 6, 1942 (Exhibit "S") and November 11, 1942 (Exhibit "T"), arbitrarily and capriciously failed and refused to require the railroad applicant to keep separate motor carrier accounts and to make motor carrier reports, in accordance with the provisions of Section 220 of the Interstate Commerce Act, and thereby subjected plaintiffs to unfair, unreasonable and discriminatory competition in that the losses on the motor-

carrier operations of the railroad applicant are obscured and hidden in the mass of revenues and expenses of the operations of the railroad as a whole.

[fol. 23] XIV

Injury to Plaintiffs

By reason of the Commission having misconceived the law and its duties, having arbitrarily and capriciously issued various orders as aforesaid, and having denied plaintiffs a reasonable and fair hearing, plaintiffs have been and will continue to be irreparably injured and damaged in that:

1. The operating ratio of plaintiffs is such that the issuance of unnecessary motor carrier certificates to the railroad competitor will result in diversion of traffic, the impairment of the economic stability of the independent motor carriers, prevent them from rendering adequate and continuous public service, and destroy their investments in their business.

2. Failure and refusal of the Commission to apply fair and equal rate making and accounting regulations to motor carrier operations conducted by railroads, similar to those regulations applicable to operations conducted by independent motor carriers, does and will continue to subject plaintiffs to unfair, unreasonable discriminatory and destructive competitive practices and will result in the diversion of traffic and the impairment of the economic stability of the independent motor carriers, prevent them from rendering adequate and continuous public service, and destroy their investments in their business.

3. The issuance of unnecessary motor carrier certificates and the failure and refusal of the Commission to apply fair and equal rate making and accounting regulations to motor carrier operations conducted by railroads, similar to those regulations applicable to operations conducted by independent motor carriers, does and will continue to subject plaintiffs to unfair, unreasonable discriminatory and destructive competitive practices and will result in the diversion of traffic and the impairment of the economic stability of the independent motor carriers, prevent them from rendering adequate and continuous public service, destroy their investments in their business and result in the creation of a transportation monopoly in the hands of the railroad applicant.

Prayers

Wherefore, the premises considered, plaintiffs, and each of them, pray that:

1. This Court issue its subpoena requiring defendants, [fol. 24] each of them, to appear and answer this bill of complaint, but not under oath; answer under oath being hereby expressly waived.

2. Vacate and set aside the orders of the Commission entered in Dockets M. C. 86687 and M. C. 86687 Subs 1 to 10, 15, 18 and 19 under dates of July 11, 1931, 17 M. C. C. 413; January 24, 1941, 28 M. C. C. 5; July 6, 1942, 34 M. C. C. 441 and November 30, 1942.

3. That the matters herein complained of be remanded to the Interstate Commerce Commission for further proceedings in accord with the opinions of this Court and specifically to:

(A) Reopen and set for further hearing Dockets M. C. 86687 and Sub Dockets 1 to 10, inclusive, and 15, 18 and 19.

(B) Hearing consider plaintiffs' evidence bearing on the service and facilities which plaintiffs are authorized to render in the territory and over the routes covered by the certificate issued in Dockets M. C. 86687 and Subs 1 to 10, inclusive, 15, 18 and 19.

(C) To hear and consider plaintiffs' evidence with respect to their operating ratio, economic stability and ability to withstand additional competition.

(D) To hear and consider the ability and willingness of plaintiffs to enter into joint arrangements with the railroad with respect to performing the service which the railroad proposes to perform under its several applications.

(E) Direct the Commission to require applicant, Seaboard Air Line Railway, by its receivers, to produce the evidence called for in the petitions of the American Trucking Associations and the Department of Justice under date of December 5, 1941.

(F) Determine the issue of public convenience and necessity by the same standards of proof as are required by motor carriers which are not owned by railroads and with due

regard for the issues of monopoly and restraint of competition.

(G) Direct the Commission to condition any certificate or certificates issued to the railroad applicant under the dockets as aforesaid, subject to the same rules and regulations governing rate and classification tariffs, accounts, records and reports as may now or from time to time be made applicable to independent motor carrier operations.

[fols. 25-27] 4. That the Court retain jurisdiction of this cause for the purpose of entering such further orders as may be necessary and for such other and further relief as to it may seem just and proper.

American Trucking Associations, Inc., Southern Motor Carriers' Rate Conference, Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K & L Transportation Company, Inc., St. Johns River Line Company, by Samuel W. Shelton, Attorney for Plaintiffs, Insurance Building, Richmond, Va.

J. Ninian Beall Investment Building, Washington, D. C.
Roland Rice, 1424 16th Street, N. W., Washington, D. C.
Edgar Watkins, Jr., 873 Spring Street, Atlanta, Ga. Of Counsel.

[fol. 28]

Form B. M. C. 8

EXHIBIT A-1

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY—PROPERTY

(This form is to be used by applicants who propose, as common carriers of property, (1) to continue an operation, or the extension of an operation, in interstate or foreign commerce instituted between June 1, 1935, and October 15, 1935, inclusive; (2) to institute an operation in interstate or foreign commerce at any time subsequent to October 15, 1935; or (3) to extend an operation for which a separate application has been filed with or certificate issued by the Interstate Commerce Commission under the Motor Carrier Act, 1935.)

(Before answering, read General Instructions on last page. Numbers under line refer to Special Instructions on that page.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of Legh R. Powell, Jr., & Henry W. Anderson, Receivers of Seaboard Air Line Railway, for a Certificate of Public Convenience and Necessity authorizing common carrier service in the transportation of property in interstate or foreign commerce under the Motor Carrier Act, 1935.	DOCKET No. 86687. Sub. No. 4.

APPLICATION

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, D. C.

Applicant States:

I. That full and correct name of applicant is Legh R. Powell, Jr., & Henry W. Anderson, Receivers of Seaboard Air Line Railway. Business address, S. A. L. Ry. Bldg., Norfolk (County), Virginia.

II. The applicant is Receivers of Seaboard Air Line Railway, doing business or proposing to do business under the trade name or style of Legh R. Powell, Jr., & Henry W. Anderson, Receivers of Seaboard Air Line Railway, and that information respecting applicant is set forth in Exhibit A, attached hereto and made a part hereof.

III. That applicant herein applies for authority (1) to continue an operation ....., or the extention of an operation .....
(Check) (Check)
as a common carrier of property in interstate or foreign commerce, which operation or extension was instituted between June 1, 1935, and October 15, 1935, inclusive; (2) to institute such an operation at a time subsequent to October 15, 1935 .....; or (3) to
(Check)
extend an operation for which a separate application has been filed with or certificate issued by the Interstate Commerce Commission under the Motor Carrier Act, 1935 .....; and
(Check)
that a description of the operation or extension for which authority is sought herein and of the class or classes of property transported or to be transported, is set forth in detail in Exhibit D, attached hereto and made a part hereof.

VI. That applicant sets forth, in Exhibit C, attached hereto and made a part hereof, the facts and circumstances upon which applicant relies to establish that the public convenience and necessity require or will require the service for which application is herein made.

[fol. 29]

V. That applicant sets forth in Exhibit D, attached hereto and made a part hereof, facts and circumstances to show that applicant is fit, willing, and able properly to perform the service for which application is herein made and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission thereunder.

VI. That applicant has complied with the order of the Commission relative to the service of this application and of notice of the filing thereof on interested parties, as shown in Exhibit E, attached hereto and made a part hereof.

VII. That applicant will submit such additional information in support of this application as the Commission may require.

WHEREFORE, The applicant prays: That the Commission issue a Certificate of Public Convenience and Necessity authorizing applicant to engage in, or continue, the transportation of commodities generally in interstate or foreign commerce, over the route or routes or within the territory herein described.

Dated this 7th day of January, 1937.

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

BY W. L. STANLEY,
Chief Public Relations Officer.

OATH

STATE OF GEORGIA
COUNTY OF FULTON } ss:

W. L. Stanley, makes oath and says that he is the Chief Public Relations Officer for Receivers of the Seaboard Air Line Railway; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has a knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

W. L. STANLEY.

Subscribed and sworn to before me, a notary public in and for the State and County above name this 7th day of January, 1937.

[SEAL]

C. L. CHAPPELL,
Notary Public, State at Large, Atlanta, Ga.

My commission expires February 2, 1940.

Form B. M. C. 8

(*Exhibit A*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

ORGANIZATION INFORMATION

1. If applicant is a *corporation*, furnish the following information:
   (*a*) Date ..... and State ..... of incorporation.
   (*b*) Names and business addresses of directors:

Name	*State, City, and Street Address*
.....	.....

   (*c*) Names and business addresses of officers:

[fol. 30]

Name	*State, City, and Street Address*	*Office Held*
.....	.....	.....

(*d*) Names and business addresses of ten principal stockholders and their respective holdings:

Name	*State, City, and Street Address*	*Extent of Interest* (2)
.....	.....	.....

(*e*) Attach to the original only, of this application and identify as Statement A-1-*e*, a copy of articles of incorporation and by-laws, with all amendments, certified to by a proper officer of applicant.

2. If applicant is a *partnership*, furnish the following information:

(*a*) Date ..... and State or State and county ..... in which partnership was formed.

(*b*) Names and business addresses of all present partners, including limited or silent partners, and their respective interests:

Name	*State, City, and Street Address*	*Proportion of Interest*
.....	.....	.....

(*c*) Attach to the original, only, of this application and identify as Statement A-2-*c*, a properly authenticated copy of the articles of partnership, if any.

3. If applicant is an *association or any other form of organization except a corporation or partnership*, furnish the following information:

(*a*) Date ..... and place ..... of organization.

(*b*) A full description of the nature and objects of the organization .....

(*c*) Names and business addresses of officers, directors, or trustees:

Name	*State, City, and Street Address*	*Office Held*
.....	.....	.....

Form B. M. C.-8

(*Exhibit A—Concluded*)

(*d*) Names and business addresses of ten principal shareholders or other parties having a beneficial interest, of whatever kind, in applicant:

Name	*State, City, and Street Address*	*Extent of Interest* (2)
.....	.....	.....

(*e*) Attach to the original, only, of this application and identify as Statement A-3-*e*, a properly authenticated copy of articles of association, trust agreement, or other documents evidencing the organization of applicant.

4. If applicant is *a trustee, receiver, assignee, executor, or administrator*, furnish the following information:

(*a*) Name and address of court under the direction of which applicant is acting: District Court of United States for Eastern District of Virginia, Norfolk, Virginia, (Court of primary jurisdiction), and District Court of United States for Southern District of Florida,

[fol. 31] Tampa, Florida, (Court of ancillary jurisdiction.)

(*b*) Nature of proceedings in which applicant was appointed. See Statement A-4-*b* attached.

(*c*) Name and business address of the real party in interest in the proceedings described in (*b*) Seaboard Air Line Railway Company, S A L Ry. Bldg., Norfolk, Virginia, its mortgage trustee, security holders and general creditors.

(*d*) If the real party in interest is other than an individual, supply the information requested in (1), (2), or (3) above, whichever is applicable. Such information may be supplied in the spaces provided above or in a separate statement, identified as Statement A-4-*d*. See Statement A-4-d attached.

5. (*a*) If applicant or the real party in interest, or any of its officers, directors, ten principal stockholders, shareholders, or beneficial owners are officers, directors, stockholders, shareholders, or beneficial owners of any other motor carrier, furnish the following information:

Name and Address of Carrier in Which Office or Interest is Held	*By Whom Office or Interest is Held*	*Relation of Such Person to Applicant or Real Party in Interest*	*Office or Extent and Character of Interest Held* (3)

(*b*) If applicant, or the real party in interest, is part of a system or group of companies which includes other motor carriers, indicate the relation of applicant to the members of such system or group including the extent of control exercised over applicant and the control, if any, which applicant exercises over others: Applicants operate in own name certain other motor service but do not control or have an interest in any independent motor carrier.

(*c*) If applicant, or the real party in interest, is engaged in any other form of transportation or in the business of warehousing, transportation brokerage, or any other similar activity which is a part of or connected with transportation, or holds any interest in any individual, partnership, corporation, or other organization so engaged, indicate the character of the business and applicant's relation thereto and interest therein. Applicants as Receivers of Seaboard Air Line Railway are engaged in the business of common carrier by rail of passengers and freight.

Form B. M. C. 8

(*Exhibit B*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

DESCRIPTION OF OPERATIONS

1. Describe the operations covered by this application as follows:

(*a*) *Operations over a regular route or routes and between fixed termini:*

(1) Between Hamlet, N. C. and Raleigh, N. C., as follows:

(i) From Hamlet, N. C., to Marston, N. C., via Highway NC 77.

(ii) From Marston, N. C., to Sanford, N. C., via Highway US 1.

(iii) From Sanford, N. C., to Pittsboro, N. C., via Highways US 1-501.

(iv) From Pittsboro, N. C., to Apex, N. C., via Highways US 64-NC 55.

[fol. 32]

(v) From Apex, N. C., to Raleigh, N. C., via Highway US 1. Return trip over same route.

Show also, *for each route separately:*

(2) The intermediate and off-route points served or proposed to be served by applicant in connection with transportation in interstate or foreign commerce. See Statement B-1-(a)-4) attached.

(3) The class or classes of property transported or proposed to be transported by applicant in interstate or foreign commerce, whether (a) commodities generally, with certain exceptions, Commodities Generally, or (b) special commodities.

(4) The present or proposed time schedule (attach copy and identify as Statement B-1-(a)-4).

(5) The extent, if any, to which operations covered by this application are or will be seasonal and the months of the normal operating season. Not Seasonal.

(6) The present or proposed interchange arrangements: (See attached Exhibit.)

(7) If application covers existing operations, date on which operations were instituted: .....

(8) If such operations were instituted by someone other than applicant, show by whom instituted and manner and date of applicant's acquisition of such operations. File copy of sales agreement, court order, articles of consolidation or merger or other evidence of applicant's acquisition of such operations. Identify as Statement B-1-(a)-8 .....

(9) If any of the operations covered by this application are conducted or are proposed to be conducted by applicant under lease or operating agreement with another, or are conducted by another under lease or operating agreement with applicant, give name and address of such other party .....
(Attach copy of such lease or agreement, identified as Statement B-1-(a)-9.) Also state whether authority to lease or contract to operate has been applied for under section 213, Motor Carrier Act, 1935 .....
(Yes or No)

(b) *Operations solely within municipal areas:*

If operations covered by this application are conducted or are proposed to be conducted solely within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, indicate the area within which such operations are conducted or proposed to be conducted and set forth all information requested in (a) (3), (5), (6), (7), (8), and (9) above.

Form B. M. C. 8

(*Exhibit B—Concluded*)

(c) *Operations other than over regular routes and between fixed termini or within municipal areas:*

(1) Location of applicant's headquarters .....

(2) Place or places at which or the territory within which applicant obtains, or proposes to obtain, the main volume of its traffic. (Indicate clearly.)

.....

[fol. 33] (3) Place or places to which or territory within which applicant transports, or proposes to transport, such traffic. (Indicate clearly.)

.....

(4) The class or classes of property transported or proposed to be transported by applicant in interstate or foreign commerce, whether (*a*) commodities generally, with certain exceptions, ...
or (*b*) special commodities .....

(5) If the answers to the preceding questions do not adequately and accurately describe the operations covered by this application, describe such operations clearly and in detail .....

(6) Furnish, in addition to the foregoing, a map clearly showing territory served as to be served. Identify as Map B-1-(*c*)-(6).

(7) Answer (*a*) (5), (6), (7), (8), and (9), so far as applicable, in an attached statement, identified as Statement B-1-(*c*)-(7).

(*d*) *Motor vehicle equipment and other facilities:*

(1) The motor vehicle equipment used or proposed to be used by applicant in the operations covered by this application is as follows: Equipment meeting all legal requirements will be purchased when and if certificate is granted.

(2) If any of the equipment set forth in (1) above is not or will not be owned by applicant, give the information indicated below:

(*e*) *Description and location of other property*, except office equipment, used or proposed to be used in the performance of the transportation service covered by this application, such as dock and terminal facilities, garages, machine shops, etc. Present terminal facilities and shops of applicants.

2. If applicant holds a certificate of public convenience and necessity or a permit from the Interstate Commerce Commission or has applied for such a certificate or permit on Form B. M. C. 1, give the certificate or permit number, or the docket number of a pending application, and set forth any facts required to show the relation between the operations covered by such certificate, permit, or application and those covered by the present application.

.....

Form B. M. C. 8

(*Exhibit C*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

PUBLIC CONVENIENCE AND NECESSITY

Set forth the facts and circumstances upon which applicant relies to establish that the service covered by this application is or will be required by the present or future public convenience and necessity, including:

1. The names and addresses of all motor carriers and all carriers by rail and water, known to applicant, with whose service the operations described in this application are or will be directly competitive.

2. The reasons, briefly and clearly stated, why the transportation service covered by this application is or will be required by the present or future public convenience and necessity.

1. Helms Motor Express, Albemarle, N. C.
Motor Transit Co., Raleigh, N. C.

[fol. 34]

Norfolk Southern RR, Norfolk, Va.
Southern Railway, Washington, D. C.

2. The rail lines in territory sought to be served are the only transportation facility which can render a coordinated rail and highway service as proposed, between points located on the railroads involved. Such motor carrier service, if authorized, will (a) expedite the movement of freight, and (b) reduce the cost of rail operation to the extent that it is now necessary to operate trains for the handling of small quantities of less than carload freight.

(*Exhibit D*)

QUALIFICATIONS OF APPLICANT

State the facts and circumstances upon which applicant relies to show that applicant is fit, willing, and able properly to perform the service for which application is herein made and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules, and regulations of the Commission hereunder, including:

1. A detailed statement of applicant's assets and liabilities on the date of this application. (Attach and identify as Statement D-1.)
2. If applicant has been engaged in motor carrier operations prior to the date of this application, furnish, if available, an income and profit and loss statement for the year or 6 months immediately preceding such date, or the period of applicant's operations, if less than 6 months. (Attach and identify as Statement D-2.)
3. A statement containing a brief description of the experience of the principal officers and operating personnel of applicant's present or proposed organization. (Attach and identify as Statement D-3.)
4. Any other facts relevant to the ability of applicant properly to perform the service covered by this application; All data required under Exhibit D are contained in reports made to the Interstate Commerce Commission by Applicants.

(*Exhibit E*)

CERTIFICATE OF SERVICE

I, W. L. Stanley, Chief Public Relations Officer, of the applicant, do hereby certify that upon the 7th day of January, 1937, I served the foregoing application upon the Boards, Commissions, or officials (or the Governor where there is no Board, Commission, or official) of the State of North Carolina, in which State applicant operates or proposes to operate, by delivering in person or by registered mail, a true, correct, and complete copy of this application to each thereof at the following addresses: North Carolina Utilities Commission, Raleigh, N. C.

W. L. STANLEY.

I further certify that I served a notice of the filing of this application, as required by Form B. M. C. 15, by delivering in person or by registered mail a copy thereof to each of the carriers named in answer to Item 1 of Exhibit C of this application.

W. L. STANLEY.

(*Statement R-1-(a)-4*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

Proposed Motor Carrier Schedule between Hamlet, N. C. and Raleigh, N. C.
(To be operated daily)

2:00 AM	Lv. Hamlet, N. C.	Ar.	1:45 PM
2:15	Cognac		1:30
2:25	Morston		1:20
2:35	Hoffman		1:10
2:55	Addor		12:50

[fol. 35]

3:10		Aberdeen	12:35
3:20		Southern Pines	12:25
3:35		Niagara	12:10
3:55		Vass	11:55
4:15		Cameron	11:35
4:35		Lemon Springs	11:15
5:00		Sanford	10:55
...		Colon	10:40
5:40		Pittsboro	10:00
6:30		Apex	9:05
6:45		Cary	8:50
7:30 AM	Ar.	Raleigh, N. C.	Lv. 8:30 AM

Note: Will not go into Colon on Northward trip.

(*Exhibit B-1-(6)*)

Legh R. Powell, Jr., & Henry W. Anderson,
Receivers of Seaboard Air Line Railway.

(6) The present or proposed interchange arrangements:

Points of interchange	Names and addresses of carriers with which traffic is or is to be interchanged.	Interchange Arrangements: Physical handling (6)	Rates (7)
Aberdeen, N. C.	Norfolk Southern RR, Norfolk, Va.	To and from Railroad depots	Joint
	Aberdeen & Rockfish RR, Aberdeen, N. C.		
Cameron, N. C.	Moore Central Ry., Asheboro, N. C.	"	"
Sanford, N. C.	Atlantic & Yadkin Ry., Greensboro, N. C.	"	"
	Atlantic & Western Ry., Sanford, N. C.	"	"
	Atlantic Coast Line RR, Wilmington, N. C.	"	"
Colon, N. C.	Norfolk Southern RR, Norfolk, Va.	"	"
Apex, N. C.	Durham & Southern RR, Durham, N. C.	"	"
Cary, N. C.	Southern Railway, Washington, D. C.	"	"
Raleigh, N. C.	Southern Railway, Washington, D. C.	"	"
	Norfolk, Southern RR, Norfolk, Va.	"	"

Proposed motor carrier service is to be in connection with and supplementary to rail service rendered by applicants. Proposed route practically parallels the rail lines of applicants, and interchange will be made with common carriers by rail where such interchange is now being made.

[fol. 36] EXHIBIT A-2

Docket MC-86687

Gaston-Garnett, S. C.
February 22, 1937 —Application filed.
June 11, 1937 —Heard by Joint Board No. 177.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 1

McBee-Sumpter, S. C.
February 23, 1937 —Application filed.
June 11, 1937 —Heard by Joint Board No. 177.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 2

Henderson-Raleigh, N. C.
February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 3

Hamlet, N. C.-Columbia, S. C.
February 23, 1937 —Application filed.
June 11, 1937 —Heard by Joint Board No. 2.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 4

Hamlet-Raleigh, N. C.

[fol. 37]

February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 5

Hamlet-Wilmington, N. C.
February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 6

Monroe-Rutherfordton, N. C.
February 23, 1937 —Application filed.
June 15, 1937 —Heard by Joint Board No. 103.
November 27, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 7

Richmond, Va.-Henderson, N. C.
February 23, 1937 —Application filed.
June 14, 1937 —Heard by Joint Board No. 7.
November 16, 1937—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 8

Greenwood-Great Fall, S. C.
May 26, 1937 —Application filed.
October 27, 1937 —Heard by Joint Board No. 177.

[fol. 38]

January 8, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 9

Jacksonville-Live Oak, Fla.
August 9, 1937 —Application filed.
October 19, 1937 —Heard by Joint Board No. 205.
February 18, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 10

Live Oak-River Junction, Fla.
August 9, 1937 —Application filed.
October 19, 1937 —Heard by Joint Board No. 205.
February 18, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 15

Monroe-Waxhaw, N. C.
August 30, 1937 —Application filed.
March 14, 1938 —Heard by Joint Board No. 205.
March 26, 1938 —Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 18

Jacksonville-Fernandina, Fla.
February 21, 1938 —Application filed.
June 22, 1938 —Heard by Joint Board No. 205.
November 15, 1938—Joint Board report.
July 11, 1939 —Division 5 report.
January 24, 1941 —Full Commission report and order.

(Here Follows 1 Photolithograph, Side Folio 39)

[fol. 40]

July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Docket MC-86687, Sub. 19

Tampa-Sebring, Fla.
August 15, 1938 —Application filed.
January 23, 1939 —Heard by Joint Board No. 205.
April 12, 1939 —Joint Board report.
February 17, 1940 —Division 5 report.
July 6, 1942 —Full Commission report and order.
November 30, 1942—Certificate issued.

Exhibit B-1

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 13th day of May, A. D. 1937.

No. MC-86687
Sub. No. 3

In the matter of the application of Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of S. A. L. Ry. Bldg., Norfolk, Va., for a certificate of public convenience and necessity, Form B. M. C. 8, Sub. No. 3, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the States of North Carolina and South Carolina, between Hamlet, N. C., and Columbia, S. C.

A more detailed statement of route or routes (or territory) is contained in said application, copies of which are on file and may be inspected at the office of the Interstate Commerce Commission, Washington, D. C., or offices of the boards, commissions or officials of the States involved in this application.

It appearing, That the above-entitled matter is one which the Commission is required by the Motor Carrier Act, 1935, to refer to a joint board:

And it further appearing, That the joint board named below is the proper board to which said matter should be referred:

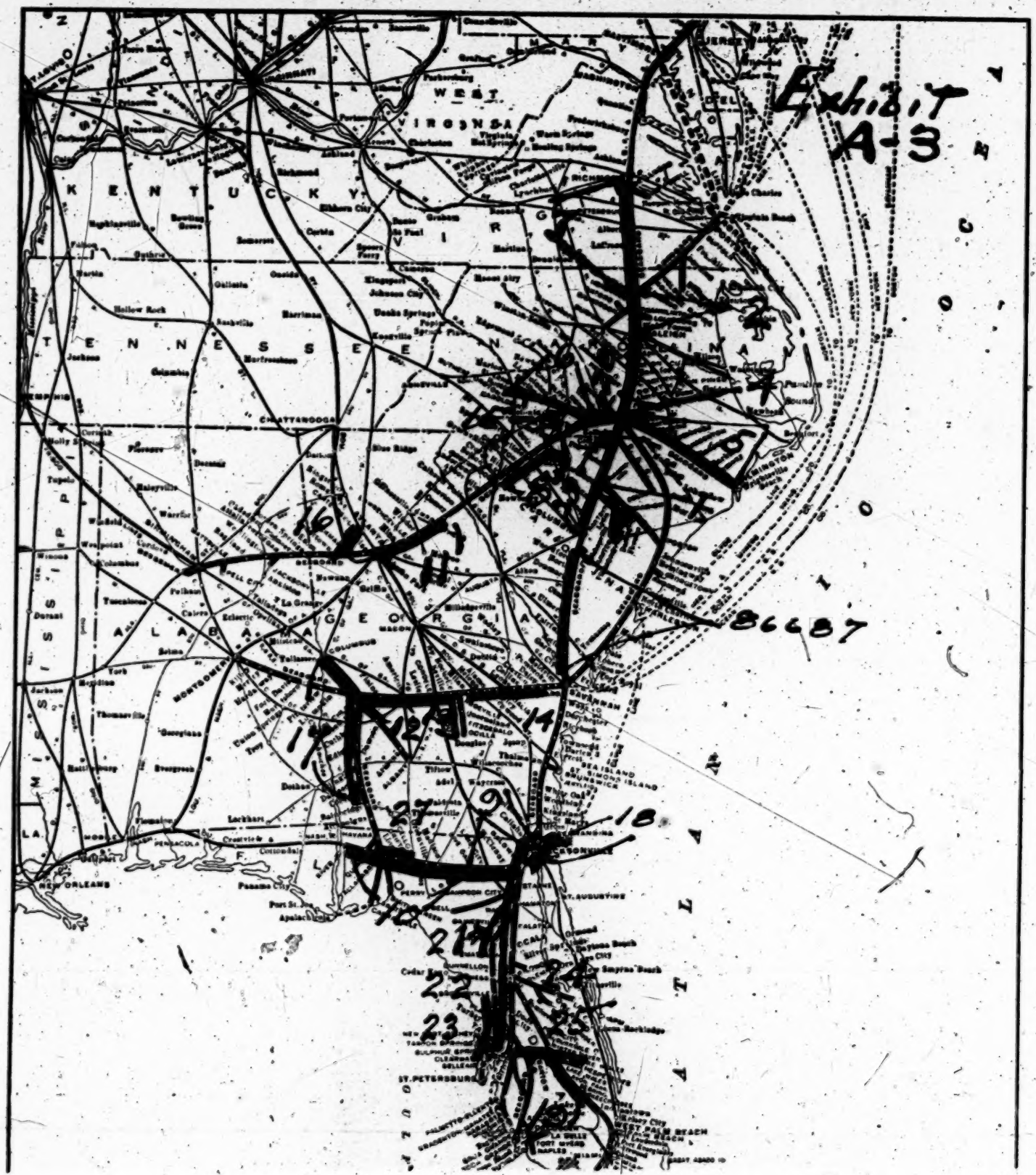
Exhibit
A-3
86487
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
CHATTANOOGA
MONTGOMERY
NEW ORLEANS
ATLANTA
ST. PETERSBURG

It is ordered, That the above-entitled matter be, and it is hereby, referred to Joint Board No. 2 for hearing on the 11th day of June, A. D. 1937, at 9 o'clock A. M. (standard time), at the rooms of the South Carolina Public Service [fol. 41] Commission, Columbia, S. C., and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That notice of this proceeding be duly given.

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT B-2

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 13th day of May, A. D. 1937.

No. MC-86687
Sub. No. 4

In the matter of the application of Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation of S. A. L. Ry. Bldg., Norfolk, Va., for a certificate of public convenience and necessity, Form B. M. C. 8, Sub. No. 4, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of North Carolina, between Hamlet and Raleigh, N. C.

A more detailed statement of route or routes (or territory) is contained in said application, copies of which are on file and may be inspected at the office of the Interstate

Commerce Commission, Washington, D. C., or offices of the boards, commissions or officials of the States involved in this application.

It appearing, That the above-entitled matter is one which the Commission is required by the Motor Carrier Act, 1935, to refer to a joint board:

And it further appearing, That the joint board named below is the proper board to which said matter should be referred;

It is ordered, That the above-entitled matter be, and it is hereby, referred to Joint Board No. 103 for hearing on the [fol. 42] 15th day of June, A. D. 1937, at 9 o'clock A. M. (standard time), at the rooms of the North Carolina Utilities Commission, Raleigh, N. C., and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That notice of this proceeding be duly given.

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the date of service hereof and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT B-3

Typical Rulings of Joint Boards re Protestants' Evidence and Motions to Consolidate

MC-86687, Sub. 3
Joint Board No. 2
Hearing June 11, 12, 1937

Joint Board Refused to Consider Relationship Pending Application

"*Mr. Watkins:* I wish to make a motion. Mr. Chairman, the evidence introduced this morning by the ap-

plicants indicates that it is the purpose of the applicants to handle through traffic over all the routes covered by Dockets MC-86687 and sub numbers thereunder. Under Section 205-b of the Motor Carrier Act, such applications should be heard by an examiner, as there are more than three states involved; or, if the Commission construes this section as limited only to motor-carrier operations, then there are three states involved, and the applications should be consolidated and heard by a joint board composed of representatives of the states of Virginia, North Carolina and South Carolina. Thus this hearing is proceeding illegally. I make a motion that all these dockets be consolidated and set for hearing before the proper authority." (R. 70.)

* * * * * * *

"*Chairman Darby:* Mr. Watkins, the Board will take [fol. 43] your motion under consideration but will proceed with the testimony, and we will decide on your motion before a decision is made as to issuing or denying a certificate." (R. 73.)

* * * * * * *

"*Mr. Watkins:* Mr. Chairman, I am not trying to stop the proceeding, as long as we are here; but I do think, in order to accomplish the purpose, there must be a definite ruling on this subject before we close the hearing in this case. May I suggest that we transmit this motion to the Commission immediately and see if it is possible to get a definite ruling?

"*Mr. Self:* No, sir. We will pass on that ourselves. That is our business here.

"*The Chairman:* Then, if you want to appeal from the decision of the Joint Board, you may do it.

"*Mr. Watkins:* I doubt if you have the authority, because there are other cases coming before other joint boards.

"*Mr. Self:* You will have a 30-day opportunity to appear before the Commission. We think there is something in your motion, but we do not want to give a decision now. We want time to consider it." (R. 74.)

* * * * * * *

"*Chairman Darby:* We have gotten to the point where we are hearing another bunch of applications. Let's confine our hearing here entirely to the application that is before us—from Columbia to Hamlet.

"I shall ask Mr. Self to make a statement with reference to Mr. Watkins' motion filed yesterday.

"*Mr. Self:* With reference to Mr. Watkins' motion filed yesterday referring to the consolidation of this and other cases pending before the Interstate Commerce Commission that have been referred to other boards, this Board is No. 177, and we must deny the motion made for the reason that the other cases are not before us. We can not consolidate them. Therefore we will proceed to take the evidence in the case before us and let the folks in Washington consider your motion there, to consolidate, and we will refer to it in any order we issue in this case.

"*Mr. Watkins:* May I make this motion, Mr. Commissioner?

"*Mr. Self:* Yes, sir.

"*Mr. Watkins:* I make a motion that this hearing be adjourned until the Commission has had opportunity to pass upon our motion to consolidate.

"*Chairman Darby:* Mr. Watkins, I am going to deny that motion, upon the grounds that the Board has orders to hear this case for the Interstate Commerce Commission. I think the Commission, before they ordered the Board to hear this case, knew what they were talking about. I think they threshed it out thoroughly before they gave the order. If the Commission see fit to hear the entire group of applications at one time, they can do so. The Commission have gone to the expense [fol. 44] of ordering this hearing, and they have people here. We are going to continue to take the testimony, and if they see fit to deny your motion they will still have the testimony before them.

"I wish to say here, let's confine ourselves to testimony on this application that is before us. We will take care of the other hearings when they come before the Board, and let's confine our remarks solely to the application that is now before us, and not interject testimony about the operation in Virginia, for instance. I did not even know they had an operation or an ap-

plication for operation pending in Virginia until it was brought out here. We have gotten into a wrangle here and have been talking about the operation from Sumter to McBee and from Hamlet to Raleigh, and even from Gaston to Garnett. Let's confine ourselves to testimony on this one proposed application that is now before us.

"*Mr. Watkins:* May I enter my objection to the decision of the Board on all three points: That is, the denial of the motion to consolidate, the motion to adjourn, and the ruling that we must confine our testimony to the application before the Board at the present time?

"*The Chairman:* Note his objections there.

"*Mr. N. A. Turner;* May I say something off the record?

"*The Chairman:* Off the record.

"(Mr. Turner made a statement which was followed by a general discussion, all outside the record.)

"*Chairman Darby:* On the record.

"*Mr. Watkins:* In view of the three rulings of the Joint Board, to which exceptions have been noted, the interveners represented by me do not desire to put in any testimony at this time but insist upon consolidation, and if the cases are consolidated they will put in testimony at that time." (R. 111-114.)

The Railroad Operates in Six States

"Q. * * * you operate in what states besides Virginia, North and South Carolina, Georgia and Florida?

"A. Alabama." (R. 97.)

MC-86687, Sub. 7
Joint Board No. 7
Hearing June 14, 1937

Joint Board Refused to Consider or Admit Testimony Relative to Other Pending Applications

"Q. Would you be willing for your certificates to be so limited as to prevent that?

"*Mr. Abeles:* Now, just a moment. We have repeatedly stated our objections in other proceeding to that

[fol. 45] question, and of course we object to it here. We are considering first of all the isolated proposal here before the Commission. As counsel for the applicants in this case, I will answer the inquiry by saying 'No.' If you phrase your question 'would we have any objections?' my answer, of course, is emphatically yes.

"*The Examiner:* I think that answers your question.

"*Mr. Watkins:* I got it answered. I have just got to get it answered some eight times before the week is out.

"Q. (By Mr. Watkins): Then under the application—by the way are you familiar with the application that you have filed for service between Raleigh and Henderson?

"*Mr. Abeles:* I object to that. He is again going beyond the scope of this case.

"(The question is read.)

"*Mr. Watkins:* I think you should consider that Mr. Terrell has testified that there was a possibility of a shipment moving from a point between Richmond and Henderson to a point between Henderson and Richmond all by motor carrier. I meant to say between Raleigh and Henderson, and between Henderson and Richmond.

"*The Chairman:* Yes, since it was stated this morning that each one of these applications was urged and asked for the independent of any other application that might be pending or that might hereafter be made for motor truck franchises, this Board is of the opinion that only the movements within the territory covered by this application should be considered. If we should go beyond that, it would open wide the case for testimony as to part motor movement and part rail movement from one end of the country to the other, and the only practical way of handling this matter as we see it is to limit it to the movement on the route described in the application.

"*Mr. Watkins:* May I urge in connection with that, that on direct testimony, this applicant has shown movements from other points than are covered by this, partly by rail and partly by motor carrier. Now, it seems that in order to get a complete picture we should also see wherein there was a possibility of moving from other points not involved in this particular application,

all by motor carriers, as we have already seen the possibility of movement by joint rail and truck service.

"*The Chairman:* In doing that, you would tend to create a greater necessity rather than diminish it, wouldn't you?

"*Mr. Watkins:* I suppose so, but at the same time we would also show to this Board the full extent to which these proposed segments of a truck operation would go when put together; and you would get a much clearer picture of the effect on competition by motor carrier than you would by limiting it to this simple inquiry.

"*The Chairman:* As I understand the application by [fol. 46] the Seaboard, there are segments by motor all the way from Richmond to Columbia?

"*Mr. Watkins:* And south of there.

"*The Chairman:* If we would admit others, we would have to consider all. We have not the privilege of doing that because we have only one application before us for one segment. Therefore, we will have to rule out the testimony which tends to show the effect of shipments originating on another proposed segment which has not been passed upon, on the route in question in this application.

"*Mr. Watkins:* I will have to note an exception.

"*The Chairman:* To that ruling the protestant takes an exception." (R. 67-71.)

The Joint Board Disregarded Other Railroad Applications and the Policy of the Railroad

"Q. Is it not true that you have prepared and filed with the ICC, eight applications for truck service paralleling your rail lines?

"*Mr. Abeles:* I object for the same reasons.

"*The Chairman:* The objection is sustained. That part of it alone is not objectionable.

"Q. (By Mr. Watkins): This is a little different situation now. Mr. Stanly, chief Public Relations Officer of this railroad, has testified to the policy of this railroad. I think as long as he testified to that policy it is perfectly correct for me to be allowed to go into and test how far that policy has been carried out.

"*Mr. Abeles:* Only insofar as it applies to this particular operation which is before the Board in this proceeding.

"*Mr. Watkins:* In his direct testimony, he referred generally to truck service at other points on his route. He referred specifically to movements between Raleigh and Wilmington.

"*The Witness:* Not by truck.

"*The Chairman:* He did not testify to any proposed truck service or as to his application for such service between Hamlet and Wilmington. I think we had better confine ourselves, gentlemen, to this case. You can ask him if he proposes any more. That is a matter of record further than that I think we should not go.

"*Mr. Watkins:* That is why I asked if he had eight applications on file.

"*The Chairman:* I will admit that. Objection overruled, and exceptions.

"*Mr. Abeles:* I won't even except to that.

"*Mr. Watkins:* Will you answer that question?

"*The Witness:* We have on file with the ICC now, seven or eight additional applications.

"Q. (By Mr. Watkins): And generally covering what area?

[fol. 47] "*Mr. Abeles:* There is the limit, I think.

"*The Chairman:* Objection sustained.

"*Mr. Watkins:* May I have an exception to that?

"*The Chairman:* Exception.

"Q. (By Mr. Watkins): Did you not advocate the passage of a law in the state of Georgia, which if passed, would have allowed railroads to have inaugurated service paralleling their lines without the issue of convenience and necessity being passed on?

"*Mr. Abeles:* I object to that.

"*The Chairman:* Objection, sustained; exception.

"*Mr. Abeles:* I am objecting to it, not because I have the slightest objection to Mr. Stanly's furnishing that information, but I can't see any possible relevancy to it.

"*The Chairman:* That can't aid us in deciding this case.

"*Mr. Watkins:* I think it will aid in finding out the general policy of this railroad.

"*The Chairman:* I think, gentlemen, the only question before us is whether or not there is public con-

venience and necessity shown for the granting of this franchise."

EXHIBIT C

Night Letter

June 11, 1937.

Bureau of Motor Carriers, Interstate Commerce Commission, Washington, D. C.

Evidence introduced by applicant in MC-86687, Sub. 3, shows that applicant contemplates the institution of through motor carrier service over all routes covered by all the sub. numbered dockets as well as their rail lines. The schedules filed with applications show physical connections and through schedules from Richmond to Georgia line and Wilmington to Rutherfordton.

Intervener, Southern Motor Carriers Rate Conference, moves that all of the cases under MC-86687 and sub numbers be consolidated as under section 205(B), the same must be heard by an examiner as the full operations, truck and rail, involve more than three states and the truck service alone involves three states, Virginia, North Carolina and South Carolina and the hearings before the present Joint Boards are illegal and upon the further ground that the several applications have been improperly and arbitrarily separate and divided in order to confuse the issue. Fair and proper determination of the applications require one hearing and much duplication of testimony and expense to Commission and parties, will be eliminated. Copy given [fol. 48] applicant and same motion made to Joint Board today. Action on motion must be had tomorrow to accomplish purpose.

Edgar Watkins, Jr.

Exhibit D

Before the Interstate Commerce Commission in the Matter of the Applications of Seaboard Air Line Railway

Dockets MC-86687 and Sub. Nos. 1, 2, 3, 4, 5, 6, 7

Petition

Comes now Southern Motor Carriers Rate Conference, Intervener, and moves that the above numbered dockets be consolidated and reset for hearing, and for cause show:

1

The Southern Motor Carriers Rate Conference is a corporation composed of more than 400 motor carriers operating to, from and between points in Southern territory.

2

Applicant, Seaboard Air Line Railway, has filed with the Commission eight applications on B. M. C. forms 8, for a certificate of public convenience and necessity covering common carrier operations by motor vehicle as follows: No. MC-86687, for a new operation between Gaston and Garnett, S. C., which application was heard by Joint Board 177 on June 12, 1937.

MC-86687, Sub. 1, extension of present operations between McBee and Sumter, S. C., which was heard by Joint Board 177 on June 12, 1937.

MC-86687, Sub. 2, for an extension of operations between Henderson and Raleigh, N. C., which is set for hearing before Joint Board 103 June 15, 1937.

MC-86687, Sub. 3, for an extension of operations between Hamlet, N. C., and Columbia, S. C., which was heard by Joint Board 2 on June 11, 1937.

MC-86687, Sub. 4, for an extension of operations between Hamlet and Raleigh, N. C., which is set for hearing before Joint Board 103 on June 15, 1937.

MC-86687, Sub. 5, for an extension of operations between [fol. 49] Hamlet and Wilmington, N. C., which is set for hearing before Joint Board 103 on June 15, 1937.

MC-86687, Sub. 6, for an extension of operations between Monroe and Rutherfordton, N. C., which is set for hearing before Joint Board 103 on June 15, 1937.

TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
ALABAMA
MISSISSIPPI
LA.
FLORIDA
ATLANTIC OCEAN
GULF OF MEXICO
CARIBBEAN SEA
BAHAMA ISLANDS
NEW ORLEANS
MONTGOMERY
CHATTANOOGA
ATLANTA
SAVANNAH
JACKSONVILLE
ST. AUGUSTINE
ST. PETERSBURG
MIAMI
PENSACOLA
Corrected to Sept. 6, 1938
86687

MC-86687, Sub. 7, for an extension of operations between Richmond, Va., and Henderson, N. C., which is set for hearings before Joint Board 7 on June 14, 1937.

3

Intervener shows that many of its members operate motor carrier service over the routes requested in the above applications, and that the granting of such applications will adversely affect them, as well as the entire motor carrier industry in Southern territory.

4

At the hearings on Dockets MC-86687 and Subs. 1 and 3, Intervener moved that the hearings be cancelled and that the cases be consolidated with the other dockets above referred to, and Intervener on June 11, 1937, by wire presented the same motion to the Commission, and now renews these motions upon the same grounds stated there, and on further grounds stated herein.

5

By reference to the above-described applications, it will be seen that applicant is attempting to establish a through and complete motor carrier operation from Richmond, Va., on the north, to the Georgia-South Carolina line on the south, and from Wilmington on the east, to Rutherfordton on the west, with several short routes in between and by reference to an application by the same applicant under the grandfather clause which shows an existing operation between Hamlet and Monroe, N. C., it will be seen that applicant is attempting to parallel its entire rail lines in this area with motor carrier operation owned and controlled by applicant railroad.

6

In addition to operating as above stated, applicant operates rail service within the states of Georgia, Florida and Alabama, and its operation jointly by motor service and rail service would be operations affecting six states, and under section 205-B of the Motor Carrier Act, such applications should be referred to an examiner for hearing, and [fol. 50] the present hearings set before joint boards are illegal.

7

Evidence introduced by applicant at the hearings on the three dockets already heard shows clearly that applicant contemplates the institution of through motor carrier service over all of the routes covered by all of the dockets, and such is an operation by motor carrier solely, affecting three states, namely, Virginia, North Carolina and South Carolina, and under section 205-B of the Motor Carrier Act, such applications should be referred to a joint board composed of representatives from each of those states, and the hearings set before the joint boards are illegal.

8

Intervener alleges that applicant divided their operation into these separate applications for the purpose of confusing the issue, and preventing interested parties from knowing the full scope contemplated, and that the Commission cannot get a complete and accurate picture of the contemplated operation unless all of the applications are consolidated and heard together.

9

Intervener alleges that hearing these various applications separately will greatly increase the cost to the Interstate Commerce Commission, and to the parties, as it will be necessary to duplicate the testimony in each case.

Wherefore: Intervener prays that the hearings in the dockets that are now set be cancelled, and that consideration of the applications that have been heard be stayed, and all of the above-mentioned dockets be consolidated, and referred for hearing to a legally constituted joint board or examiner.

Respectfully submitted, Southern Motor Carriers Rate Conference; By Edgar Watkins, Jr., General Counsel.

Certificate

This is to certify that I have served a copy of this petition on the attorney for the applicant, this the 14th day of June, 1937.

Edgar Watkins, Jr.

[fol. 51] EXHIBIT E

Before the Interstate Commerce Commission Bureau of Motor Carriers

Motion to Consolidate Dockets MC-86687 and Sub. Nos. 1 through 17 and Dockets MC-28983 and MC-28984

Comes now the Southern Motor Carriers Rate Conference, hereinafter referred to as intervener, and files this, its motion to consolidate, showing the Commission, as follows:

I

Intervener is a non-profit corporation composed of more than 450 motor carriers engaged in the transportation of property in interstate commerce to, from and between points in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia, which carriers are its members.

II

The Receivers of the Seaboard Air Line Railway, of Norfolk, Va., have filed the following applications for certificates of public convenience and necessity with the Commission requesting authority to transport property in interstate commerce over the following routes:

Docket MC-86687—Between Gaston and Garnett, S. C.
Sub. No. 1—Between McBee and Sumter, S. C.
Sub. No. 2—Between Henderson and Raleigh, N. C.
Sub. No. 3—Between Hamlet, N. C., and Columbia, S. C.
Sub. No. 4—Between Hamlet, N. C., and Raleigh, N. C.
Sub. No. 5—Between Hamlet and Wilmington, N. C.
Sub. No. 6—Between Monroe and Rutherfordton, N. C.
Sub. No. 7—Between Richmond, Va., and Henderson, N. C.
Sub. No. 8—Between Greenwood and Great Falls, S. C.

Sub. No. 9—Between Jacksonville and Live Oak, Fla.

Sub. No. 10—Between Live Oak and River Junction, Fla.

Sub. No. 11—Between Atlanta and Comer, Ga.

[fol. 52] Sub. No. 12—Between Americus and Dawson, Ga.

Sub. No. 13—Between Americus and Ocilla, Ga.

Sub. No. 14—Between Vidalia and Pembroke, Ga.

Sub. No. 15—Between Cedartown and Cartersville, Ga.

Sub. No. 16—Between Cartersville and Rockmart, Ga.

Sub. No. 17—Between Columbus and Bainbridge, Ga.

Docket MC-28983—Various routes in the states of N. C., Ga., and Fla. under "grandfather" application.

Docket MC-28984—Various routes in the states of N. C., Ga., and Fla. under "grandfather" application.

III

Docket MC-86687 and Sub. Nos. 1 through 7 have been heard by various Joint Boards and proposed reports have been issued therein; however, the said hearings in those cases were illegal for the reasons set out in motions and exceptions filed in said dockets. Intervener is a party of record in each of those cases.

IV

Docket MC-86687 (Sub. Nos. 8, 9 and 10) have been heard by various Joint Boards and a proposed report has been issued in Sub. No. 8; however, the said hearings in those cases were illegal for the reasons as above set forth.

V

Dockets MC-86687 (Sub. Nos. 11, 12, 13, 14, 15, 16 and 17) and Dockets MC-28983 and MC-28984 have not been assigned for hearing; however, it appears that the Commission following the procedure in other dockets filed by this applicant will assign the same for hearing before Joint

Boards, which hearings would be illegal for the reasons as set forth in paragraph VII hereto.

VI

Intervener shows that many of its members operate motor carrier service over the routes requested in the above applications, and that the granting of such applications will adversely affect them, as well as the entire motor carrier industry in Southern Territory.

[fol. 53] VII

Applicant at the present time is performing motor carrier service between certain points, for instance, between Hamlet and Monroe, N. C., and between Jacksonville and Wildwood, Fla., and other places, in addition to operating rail service within the States of Georgia, Florida, Alabama, South Carolina, North Carolina and Virginia, and handles freight in joint rail and truck service over its entire railroad and motor carrier operations.

Under Section 205 (b) of the Motor Carrier Act, 1935, all applications for motor carrier service affecting three or more States must be submitted to a Joint Board composed of a representative of each State, or an examiner or member of the Commission. Thus, the hearings that have been held and others that are contemplated are illegal for all of the applications above referred to should be consolidated and referred to an examiner or member of the Commission for hearing.

Evidence introduced by the applicant at the hearings on the dockets already heard before Joint Boards clearly shows that the applicant contemplates the institution of through motor carrier service paralleling all of its rail service and such contemplated operation affects more than three States.

Under Section 205 (b) of said Motor Carrier Act, 1935, therefore, such application should be referred to a Joint Board composed of representatives of each of these States, an examiner, or a member of the Commission.

VIII

Intervener alleges that applicant divided their operation into these separate applications for the purpose of confusing the issue, and preventing interested parties from knowing the full scope contemplated, and the Commission cannot get a complete and accurate picture of the contemplated operation unless all of the applications are consolidated and heard together.

IX

Intervener alleges that hearing these various applications separately will greatly increase the cost to the Interstate Commerce Commission, and to the parties, as it will be necessary to duplicate the testimony in each case.

[fol. 54] Wherefore, Intervener prays:

(1) That action in application Dockets MC-86687 and Sub. Nos. 1 through 10 heretofore heard be stayed.

(2) That the Commission assign for hearing all the afore-mentioned Dockets Nos. MC-86687 and Sub. Nos. 1 through 17 and MC-28983 and MC-28984 including those which illegal hearings have heretofore been held, before a properly and legally constituted Joint Board composed of representatives of all States involved, or an examiner, or a member of the Commission, as required by Section 205 (b) of the Motor Carrier Act, 1935.

Respectfully submitted, Southern Motor Carriers Rate Conference, Edgar Watkins, Jr., General Counsel.

808 Bona Allen Building, Atlanta, Ga., January 27, 1938.

Exhibit F

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. S., on the 16th day of February, A. D., 1938.

No. MC-28983

Seaboard Air Line Railway, Common Carrier Application

No. MC-28984

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687 (Sub. Nos. 1 Through 17)

Seaboard Air Line Railway, Extension of Operations

Upon further consideration of the record and of the motion of Southern Motor Carriers Rate Conference to consolidate the above-entitled matters; and good cause therefor appearing;

[fol. 55] *It is ordered*, That the said motion to consolidate of the Southern Motor Carriers Rate Conference be, and it is hereby, denied.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

Exhibit G

Before the Interstate Commerce Commission, Bureau of Motor Carriers

Petition for Intervention in Dockets MC-28983, 28984, 86687, and 86687 (Sub. Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17)

Comes now the Southern Motor Carriers Rate Conference, hereinafter referred to as intervener, and prays that the Commission give consideration to this, its formal

prayer for intervention in the above numbered dockets; grant it the right to intervene, to be heard on brief, and to take part in any proceedings which may hereafter be held in these dockets; and shows the Commission its interest in the same, as follows:

I

Intervener is a non-profit corporation with offices in Atlanta, Georgia, and is composed of more than four hundred and fifty motor carriers engaged in the transportation of property in interstate commerce to, from and between points in the Southern States. A list of such carriers is attached hereto as Exhibit "A."

II

The applications for certificates of public convenience and necessity filed by appellant in these dockets cover the routes and the territory in which many of intervener's members are now operating, and the granting of the authority sought by this applicant would directly and seriously interfere with and injure such of intervener's members.

III

The applications for certificates of public convenience and necessity filed by applicant in these dockets by reason [fol. 56] of the important principles involved, affect all the members of intervener whether operating over the routes in question or not.

IV

These dockets are a part of and relate to dockets MC-86687 and MC-86687 (Sub. Nos. 1 through 7) of this same applicant in which intervener was a party by petition of intervention, presented evidence, cross examined witness, filed brief and was heard on exceptions and otherwise given the privilege to protect its interest and the interest of its members as they appeared and might appear.

Wherefore, Intervener prays that the Commission will grant this, its petition of intervention in the dockets above numbered.

Respectfully submitted, Southern Motor Carriers Rate Conference, Edgar Watkins, Jr., General Counsel.

MEMBERSHIP LIST

Exhibit "A"

SOUTHERN MOTOR CARRIERS RATE CONFERENCE

808 Bona Allen Building,
ATLANTA, GA.

October 14, 1937.

Name of Carrier	Address	City and State
	ALABAMA	
Anniston Motor Express		Anniston, Ala.
Baggett Transportation, Inc.	2417 Ave. A., S.	Birmingham, Ala.
Barber Transportation Co.	Box 604	Dothan, Ala.
Bayou La Batre Dauphin Island Express		Bayou La Batre, Ala.
Bell Transfer Company		Selma, Ala.
Birmingham Transfer Co., Inc.	2518 Sixth Ave., N.	Birmingham, Ala.
Bishop Truck Line		Sylacauga, Ala.
Bolton Motor Van Lines	306 North 16th St.	Birmingham, Ala.
Brooks Truck Line	213 N. Perry St.	Montgomery, Ala.
Cahaba Freight Line	1310 First Ave. No.	Birmingham, Ala.
Jack Cole Company, Inc.	2315 Fifth Ave. So.	Birmingham, Ala.
Deaton Truck Lines, Inc.	1310 First Ave. No.	Birmingham, Ala.
Ellis Truck Lines		Jasper, Ala.
Fuller Truck Line		Wetumpka, Ala.
[fol. 57]		
Griffith Freight Line, Inc.	1424 Second Ave. N.	Birmingham, Ala.
Gulf Transport Company		Mobile, Ala.
Hains Brothers Truck Line		Selma, Ala.
Hilton J. Harrell		Enterprise, Ala.
Howard Hall Company, Inc.		Birmingham, Ala.
W. R. Hendrix Freight Line		Blountville. Ala.
Hilyer and Handley Transfer Co.		Sycamore, Ala.
Jackson Truck Line		Montgomery, Ala.
J. D. Jordan, Jr.		Centre, Ala.
Thomas M. Lambert		Opelika, Ala.
Tallassee Truck Line	516 N. Lawrence St.	Montgomery, Ala.
Malone Fast Freight		Decatur, Ala.
Malone Freight Line		Decatur, Ala.
Roy S. Martin		Red Bay, Ala.
McCrary Transfer Co.	P. O. Box 146	Decatur, Ala.
McDonald & Elington Freight Lines	117 Bell St.	Montgomery, Ala.
McWhorter Transfer Co.		Fort Payne, Ala.
Motor Terminal & Trans. Co., Inc.		Montgomery, Ala.
Nelson Transfer Co.	1430 8th Ave. No.	Birmingham, Ala.
North Alabama Motor Express, Inc.	2320 Second Ave. S.	Birmingham, Ala.
Pugh Transfer		Union Springs, Ala.
Red Top Transfer Company		Tuscaloosa, Ala.
J. Owen Robins		Jasper, Ala.
Schlosser Freight Line	2330 4th Ave., No.	Birmingham, Ala.
Sharp Transfer		Florence, Ala.
Jack Skewes	P. O. Box 405, Rt. 2,	Bessemer, Ala.
Southern Highway Express, Inc.	1310 First Ave. N.	Birmingham, Ala.
Southern Motor Express, Inc.	1516 Second Ave. N.	Birmingham, Ala.
St. Andrews Bay Transportation Co.		Dothan, Ala.
W. L. Thompson		Troy, Ala.
Union Express Freight Co., Inc.		Mobile, Ala.
United Motor Freight Terminal, Inc.		Birmingham, Ala.
Warrior River Freight Line		Jasper, Ala.
Williams Transfer Co.		Decatur, Ala.

Name of Carrier	Address	City and State
ARKANSAS		
Bennett Truck Line		Paragould, Ark.
MISCELLANEOUS		
Atlantic Moving & Warehouse Co.		Hartford, Conn.
M. J. Kline		Hartford, Conn.
Harlan N. Newberry		Hartford, Conn.
William L. Curles		Washington, D. C.
Doub Transfer & Storage Co.		Washington, D. C.
Freeman Transfer & Storage Co.		Washington, D. C.
Economical Moving Co.		Washington, D. C.
National Delivery Assn., Inc.		Washington, D. C.
Rogers Transfer		Washington, D. C.
Tanner's Transfer		Washington, D. C.
Terminal Van & Storage Co.		Washington, D. C.
[fol. 58] **FLORIDA**		
Acme Freight Lines, Inc.		Jacksonville, Fla.
Bee Line Transfer Co.		Tampa, Fla.
Blue's Truck Line, Inc.	520 E. Forsyth St.	Jacksonville, Fla.
Brown's Motor Freight Lines, Inc.,	Foot Newman St.	Jacksonville, Fla.
C & H Transfer Company		Ft. Lauderdale, Fla.
Central Truck Lines, Inc.	405 Eunice St.	Tampa, Fla.
Delcher Bros. Storage Co.		Jacksonville, Fla.
Edwards Line		Tampa, Fla.
Elliott-Young Consolidated, Inc.	1520 Clare Avenue	W. Palm Beach, Fla.
Fogarty Brothers Transfer, Inc.		Bradenton, Fla.
Great Southern Truck Co. (Includes Lane's Truck Line and National Convoy & Trucking Co.)	1061 Clark St.	Jacksonville, Fla.
Green Brothers Transfer	Box 52	Clearwater, Fla.
Hartline Line		Tampa, Fla.
Hunt Truck Line	302 N. Jefferson St.	Tampa, Fla.
Jacksonville Beach Truck Line	809 W. Forsyth St.	Jacksonville, Fla.
Kennelly Transfer & Storage Co.	724 Pippin St.	Jacksonville, Fla.
Pete Koplinski		Tampa, Fla.
L & L Freight Lines, Inc.	1418 W. Church St.	Jacksonville, Fla.
Mathews Truck Line	259 NW Fourth St.	Miami, Fla.
McJunkin Truck & Bus Line		Fernandina, Fla.
Over-Seas Transportation, Inc.		Miami, Fla.
Peter's Truck Line		St. Augustine, Fla.
Pittman Truck Line		Pensacola, Fla.
R-C Motor Lines	112 Stewart St.	Jacksonville, Fla.
Star Truck Line, Inc.	Box 2421	Tampa, Fla.
St. Johns River Line		Jacksonville, Fla.
Southern Transfer & Storage Co.		St. Petersburg, Fla.
Suddath Moving & Storage Co.		Tampa, Fla.
Suddath Moving & Storage Co.		Jacksonville, Fla.
Tamiami Trail Tours, Inc.		Tampa, Fla.
Tarpon Truck Line		Tarpon Springs, Fla.
University City Transfer Co., Inc.		Gainesville, Fla.
GEORGIA		
AAA Highway Express, Inc.	24 14th St. NW	Atlanta, Ga.
Aaron Transit Co.	85 Houston St.	Atlanta, Ga.
Anderson Motor Line		Elberton, Ga.
Atlanta-Macon Motor Express, Inc.		Jackson, Ga.
Atlanta-Union Point Trucking Co., Inc.		Greensboro, Ga.
Augusta Truck Company, Inc.	21 Campbell Bldg.	Augusta, Ga.
Barnes Freight Lines		Carrollton, Ga.
A. A. Bassett Transfer Co.	713 S. Greenwood Street	LaGrange, Ga.

Name of Carrier	Address	City and State
Benton Rapid Express, Inc.	410 W. Jones St.	Savannah, Ga.
Bona Allen Industries Truck Line		Buford, Ga.
Brown Transfer & Storage Co.	Broad St.	Rome, Ga.
Burnham's Van Service		Columbus, Ga.
T. C. Burton		Rome, Ga.
[fol. 59]		
Capital Freight Line, Inc.	552 Murphy Ave., SW	Atlanta, Ga.
Carter Motor Lines	548 W. Oglethorpe Ave.	Savannah, Ga.
Cedartown-Atlanta Freight Lines		Cedartown, Ga.
Consolidated Van & Storage Co.	Volunteer Bldg.	Atlanta, Ga.
Continental Carriers, Inc.	215 Courtland St. NE	Atlanta, Ga.
Dewberry & Henry Truck Line		Temple, Ga.
Dixie Freight Lines, Inc.	35 Fair St. SE	Atlanta, Ga.
East & West Motor Lines, Inc.	20 14th St. NW	Atlanta, Ga.
Edwards Freight Line		Monticello, Ga.
Fedderwitz Trucking Co.	Box 864	Savannah, Ga.
Fireproof Storage Company	133 E. Bay St.	Savannah, Ga.
Five Transportation Co.	301 Gloucester St.	Brunswick, Ga.
Georgia Highway Express, Inc.	11 Krog St. NE	Atlanta, Ga.
Georgia Motor Express, Inc.	DeKalb & Krog St.	Atlanta, Ga.
Granite City Transfer Co.		Elberton, Ga.
Harper Motor Lines		Elberton, Ga.
Harrison Transfer Co.	1002 Fenwick St.	Augusta, Ga.
Carroll Hawkins		Canton, Ga.
Russell C. House Transfer & Storage	135 Auburn Ave. NE	Atlanta, Ga.
Hunt Freight Lines		LaFayette, Ga.
Independent Transfer Co.		Brunswick, Ga.
Homer Jones Transfer		Columbus, Ga.
K & L Transportation Co., Inc.		Waycross, Ga.
A. V. Kennedy & Co.		Waycross, Ga.
Maner's Transfer	238 Fifth Ave.	Rome, Ga.
Manley Bros.		Eatonton, Ga.
Clifford Martin Transfer		Columbus, Ga.
Mathews Transfer Co.		Thomaston, Ga.
T. C. Meaders		Covington, Ga.
Moffet Transit Lines	350½ Cherry St.	Macon, Ga.
Monroe Motor Express		Monroe, Ga.
Montgomery-Atlanta Motor Freight Lines, Inc.	436 Whitehall St. SW	Atlanta, Ga.
S. J. Morris	1115 Princess Ave. SW	Atlanta, Ga.
George C. Murdock	13 N. Hamilton St.	Dalton, Ga.
North Georgia Transportation Co.		Canton, Ga.
Northern Freight Lines	Box 445	Gainesville, Ga.
Wm. F. Pendleton	Box 727	Valdosta, Ga.
W. R. Pickard	210 N. Fourth St.	Tifton, Ga.
P. H. Ponder		Madison, Ga.
Reliable Transfer Company	8 Ninth St.	Augusta, Ga.
Reliable Trucking Co., Inc.	8 Ninth St.	Augusta, Ga.
Sale Transfer Company	1002 Fenwick St.	Augusta, Ga.
Savannah & Augusta Transportation		Sylvania, Ga.
Southeastern Transfer & Stg. Co.	168 Forsyth St. SW	Atlanta, Ga.
Starr Transfer Company		Rockmart, Ga.
Statesboro & Savannah Trk. Line	118 N. College St.	Statesboro, Ga.
Suddath Moving and Storage Co.		Atlanta, Ga.
[fol. 60]		
Thomas Transfer Company		Athens, Ga.
Thomas Transfer		Trion, Ga.

Name of Carrier	Address	City and State
Wm. M. Thomas		Valdosta, Ga.
Trans-Continental Van Lines		Atlanta, Ga.
J. Paul Upchurch	820 First National Bank Bldg.	Atlanta, Ga.
Walton Truck Line		Tallapoosa, Ga.
Washburn Storage Company		Macon, Ga.
Carey F. Weathers Trans. & Storage Co.	1268 Druid Pk. Ave.	Augusta, Ga.
Weathers Bros. Transfer Co., Inc.	733 Boulevard, NE	Atlanta, Ga.
A. C. White Transfer & Stor. Co.	414 Edgewood Ave.	Atlanta, Ga.
Wimberly Transfer Company		Valdosta, Ga.
John C. Wilson		Millen, Ga.
Zaban Storage Co.	12-14 Spring St. SW	Atlanta, Ga.
MISCELLANEOUS		
American Van Service		Chicago, Ill.
National Van Lines		Chicago, Ill.
Red Ball Movers		Chicago, Ill.
Johnson Storage & Transfer	712 Connecticut	Gary, Ind.
Public's Moving Company		Hammond, Ind.
Terminal Transport Co., Inc.		Indianapolis, Ind.
KENTUCKY		
Eastern Motor Freight Company	(Mail, Louisville, Ky.)	Pittsburgh, Pa.
Huber & Huber Motor Express, Inc.		Louisville, Ky.
Robert James		Franklin, Ky.
The Silver Motor Express, Inc.		Louisville, Ky.
LOUISIANA		
Fabacher Motor Express	201 N. Front St.	New Orleans, La.
Littlejohn Transfer & Stor. Co.	1503 N. Boulevard	Baton Rouge, La.
Mobile Express, Inc.	1155 Constance St.	New Orleans, La.
Sanders Truck Line		Kentwood, La.
Shanks Truck Lines		Lake Providence, La.
Tri-State Motor Express Co.	1722 Erato St.	New Orleans, La.
MISCELLANEOUS		
Chernock Transfer Company		Baltimore, Md.
Vahan Apikian, d/b/a United Motor Lines		Watertown, Mass.
C. Bain	487 Medford St.	Somerville, Mass.
F. A. Hinde & Son	11 Myrtle St.	Somerville, Mass.
John Nayarian		Watertown, Mass.
Farr Moving Company	2523 Beniteau Ave.	Detroit, Mich.
Hamilton Moving & Storage Co.	5161 Hamilton Ave.	Detroit, Mich.
Owl Moving, Stor. & Cartage Co.		Detroit, Mich.
Stewart Moving Company	1864 John R St.	Detroit, Mich.
Suburban Van Lines, Inc.		
Woodland Transfer Co.	2905 26th Ave. S.	Minneapolis, Minn.
MISSISSIPPI		
T. W. Anderson		Hazlehurst, Miss.
Bailey Truck Service, Inc.	P. O. Box 162	Natchez, Miss.
[fol. 61]		
Bond Motor Lines		Jackson, Miss.
Dean Truck Line	Wick & Filmore Sts.	Corinth, Miss.
Green Truck Line		Hattiesburg, Miss.
Ernest B. Lewy		Greenville, Miss.
Luter's Truck Lines, Inc.	Box 848	Meridian, Miss.
Magee Truck Lines, Inc.		Jackson, Miss.

Name of Carrier	Address	City and State
McDonough Motor Express, Inc.		Hattiesburg, Miss.
McGehee Transfer Company	1111 W. Capitol St.	Jackson, Miss.
Red Ball Express Lines		Brookhaven, Miss.
Slade Truck Lines, Inc.		Hattiesburg, Miss.
Vicksburg Transfer Co.		Vicksburg, Miss.

MISCELLANEOUS

Needles Moving & Storage Co.		St. Louis, Mo.
Terminal Warehouse Corp.		Omaha, Nebr.
Community Van Service		Palisades Park, N. J.
Empire Moving & Storage Co.		Bayonne, N. J.
Engle Brothers		Elizabeth, N. J.
Ace Van Lines	5914 Fourth Ave.	Brooklyn, N. Y.
Al's Van Company	245 E. 81st St.	New York, N. Y.
Anaconda Van Service, Inc.		New York, N. Y.
Anderson Van Service, Inc.	5623 20th Ave.	Brooklyn, N. Y.
Christopher Bardunias		New York, N. Y.
Bay Shore Van Service		Bay Shore, N. Y.
Caswell Van Lines		Henrietta, N. Y.
Comet Van Lines		New York, N. Y.
Gene Eddies Van, Inc.		New York, N. Y.
National Movers of N. Y., Inc.		New York, N. Y.
Return Loads Bureau		New York, N. Y.
United Transit Lines, Inc.	91 Seventh Ave.	New York, N. Y.
Vanportation & Warehouse Corp.		Long Isl. City, N. Y.

NORTH CAROLINA

Abernethy Transfer & Stor. Co.	Water Ave. at 11th St.	Hickory, N. C.
Akers & Hudson Motor Lines, Inc.,	363 W. Airline Ave.	Gastonia, N. C.
Anderson Truck Line		Lenoir, N. C.
Atlantic States Motor Lines, Inc.,	P. O. Box 1051	High Point, N. C.
Axley Truck Line		Murphy, N. C.
Barbour's Motor Express		Fuquay Spr'gs, N. C.
Barnwell Brothers, Inc.		Burlington, N. C.
Black Motor Express	3 So. Water St.	Wilmington, N. C.
Blizard Motor Express		Mount Airy, N. C.
L. H. Bottoms Truck Line, Inc.	Box 1763	High Point, N. C.
Bowen Transfer Company	Box 224	Roxboro, N. C.
Buffaloe Brothers		Carthage, N. C.
Burton Motor Lines		Reidsville, N. C.
C & S Motor Express Company		N. Wilkesboro, N. C.
Capital Coast Express		Clayton, N. C.
Carolina Freight Carriers Corp.		Cherryville, N. C.
Carolina Transfer & Storage Co.	1203 W. Morehead St.	Charlotte, N. C.
Collins Transfer & Storage		Lumberton, N. C.
Colonial Motor Freight Lines		High Point, N. C.

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Commonwealth Motor Dispatch		Charlotte, N. C.
Davis Transportation Truck Line	30 Commercial Pl.	Roanoke Rpds, N. C.
E & H Trucking Company		Albemarle, N. C.
East Carolina Freight Line		New Bern, N. C.
D. E. Everett		Conetoe, N. C.
Farrar Transfer Company	1121 S. Front St.	Wilmington, N. C.
Four Oaks Transfer		Four Oaks, N. C.
R. D. Fowler Motor Lines, Inc.	518 W. High St.	High Point, N. C.
Fredrickson Motor Express Corp.		Charlotte, N. C.
George Freeman Truck Lines		Zirconia, N. C.
Goff Motor Lines, Inc.		High Point, N. C.
Goldston Motor Express		Spray, N. C.
Helm Motor Express		Albemarle, N. C.

Name of Carrier	Address	City and State
I. H. Hill		Durham, N. C.
Hooks Motor Lines		High Point, N. C.
Horton Motor Lines, Inc.	1001-1031 S. Clarkson St.	Charlotte, N. C.
Houston & Cloutz Motor Express		Ingalls, N. C.
H. Hunt & Company	120 N. Water St.	Wilmington, N. C.
Imperial Transportation Co., Inc.	P. O. Box 633	Greensboro, N. C.
Interstate Transfer		High Point, N. C.
Johnson Transit Company		Dunn, N. C.
Leary Brothers Storage Company		Edenton, N. C.
Lentz Transfer & Stg. Co.	Union Motor Frt. Terminal	W'ston-Salem, N. C.
Lewis & Holmes Motor Frt. Corp.	Box 206	High Point, N. C.
J. Wesley Lowther	216 Tuckaseege Rd.	Charlotte, N. C.
M & M Motor Express		N. Wilkesboro, N. C.
Martin Motor Lines	104 S. Main St.	Belmont, N. C.
Maynor Transfer Company		Fayetteville, N. C.
Miller Motor Express	6th & Brevard Sts.	Charlotte, N. C.
Miller Motor Lines		Lenoir, N. C.
Motor Transit Company		Raleigh, N. C.
N. B. & C. Motor Lines		Washington, N. C.
National Convoy & Trucking Co.	918 Oaklawn Ave.	Charlotte, N. C.
North Carolina Line, Inc.		Wilmington, N. C.
N. Wilkesboro & Statesville Mtr. Exp.		N. Wilkesboro, N. C.
P & F Motor Express, Inc.		Wilmington, N. C.
Parker & Stout Transfer Co.	1325 S. Main St.	High Point, N. C.
J. W. Propst, Jr., Inc.		Concord, N. C.
Raleigh-Danville Motor Express		Raleigh, N. C.
Ratley's Transfer		Lumberton, N. C.
Ratliff & Ratliff		Morven, N. C.
Shaw Transfer Company		Salisbury, N. C.
Smith's Transfer Company, Inc.	P. O. Box 599	Lenoir, N. C.
Smith's Transfer Company		Lenoir, N. C.
Southern Spindle & Flyer Co.		Charlotte, N. C.
Stallings Transfer Service	P. O. Box F	Spring Hope, N. C.
Tallant Transfer Company		Hickory, N. C.
Textile Transportation, Inc.		Burlington, N. C.
Thurston Motor Lines	208 N. Railroad St.	Wilson, N. C.
[fol. 63]		
Turner's Trucking Co.	101 S. Lexington Ave.	Asheville, N. C.
United Express Company		Henderson, N. C.
Vicks Truck Line		Woodland, N. C.
Walser Transportation, Inc.	Box 1451	Greensboro, N. C.
Warren's Transfer	305 W. Martin	Raleigh, N. C.
W & E Motor Express		Elkin, N. C.
Widenhouse Transfer Company		Midland, N. C.
Winecoff Transfer Co.		Concord, N. C.
R. Glenn Winecoff		Concord, N. C.
C. B. Yates Motor Express		N. Wilkesboro, N. C.

MISCELLANEOUS

Dixie Ohio Express Company	538 E. South St.	Akron, Ohio
Garrett Van Service		Toledo, Ohio
Roadway Express, Inc.	97 E. South St.	Akron, Ohio
Atlantic States Line, Inc.	Pier 19, N. Delaware Ave.	Philadelphia, Pa.
Good Moving & Storage Co.	15 N. 59th St.	Philadelphia, Pa.
Paul Gonez	1029 E. Tioga St.	Philadelphia, Pa.
Shadyside Transfer & Storage Co.		Pittsburgh, Pa.

Name of Carrier	Address	City and State
SOUTH CAROLINA		
Batesburg Hauling Co., Inc.		Batesburg, S. C.
Beard Laney Hauling Company		Camden, S. C.
Brown Motor Lines & Stg. Corp.	235 W. Coffee St.	Greenville, S. C.
Carey Transfer & Stg. Co., Inc.	296 S. Liberty St.	Spartanburg, S. C.
Carolina Transfer Company		Greenville, S. C.
T. G. Chaplin		Hartsville, S. C.
Charleston Motor Express		Charleston, S. C.
Checker Transportation & Stg. Co.	P. O. Box 251	Columbia, S. C.
T. B. Clark		Lynchburg, S. C.
Ulysse G. DesPortes		Winnsboro, N. C.
W. R. Dobson, Jr.	R. F. D., Beach Island, S. C.	Augusta, Ga.
J. S. Edmunds Trucking		Clover, S. C.
C. P. Fleming		Tillman, S. C.
G & P Trucking Company		Greenwood, S. C.
William Edward Gettys, Jr.	32 Hampton Ave.	Greenville, S. C.
H & B Trucking Co., Inc.		Rock Hill, S. C.
Bruce Harter		Fairfax, S. C.
C. A. Harvin, Jr., Truck Line		Summerton, S. C.
M. D. Hicklin Motor Trucker		Columbia, S. C.
Cecil Hodge	1 Manning St.	Sumter, S. C.
J. W. Huckabee		Greenwood, S. C.
Inland Waterways Transfer Co.	P. O. Box 635	Georgetown, S. C.
Interstate Truck Line		Aiken, S. C.
Louis P. Jervey, Inc.	53 Market St.	Charleston, S. C.
Johnson Transfer Company	301 E. McBee Ave.	Greenville, S. C.
O. D. Jones	Box 63	N. Charleston, S. C.
Carroll T. Jordan		Hartsville, S. C.
Alva Keels	Box 610	Florence, S. C.
[fol. 64]		
Kelly Transfer		Florence, S. C.
Long Motor Lines		Greenwood, S. C.
Lowe's Transfer		Aiken, S. C.
Martin Motor Line	700 Pendleton St.	Columbia, S. C.
McAlister Transfer Co., Inc.	1 Westcott Court	Charleston, S. C.
McDougall Transfer Co.		Cheraw, S. C.
J. F. McLaurin, Inc.		McColl, S. C.
Motor Express, Inc.		Columbia, S. C.
New South Express Lines, Inc.	Box 479	Columbia, S. C.
Nilson Motor Express Lines		Walterboro, S. C.
Southern United Lines, Inc.		Greenville, S. C.
Parrish Dray Line		Sumter, S. C.
Peoples Motor Express, Inc.		Charleston, S. C.
Poole Transportation, Inc.		Greenville, S. C.
Privett & Mozingo		Florence, S. C.
David I. Reardon	316 N. Salem St.	Sumter, S. C.
V. L. Rice		Rock Hill, S. C.
Rogers & Mease Transfer		Greenville, S. C.
Neil Sanders		Allendale, S. C.
Sineath Truck Line		Timmonsville, S. C.
Smith & Waters		Johnston, S. C.
Stanton Transportation Co., Inc.		Bennettsville, S. C.
J. T. Strickland Truck Line		Bishopville, S. C.
C. M. Taylor		Manning, S. C.
Textile Warehouse Company		Greenville, S. C.
The Transportation, Inc.		Greenville, S. C.
Vaughan's Transfer		Union, S. C.
White Truck Line	212 Brockman Ave.	Greenville, S. C.

Name of Carrier	Address	City and State
	TENNESSEE	
A. B. A. Transfer		Memphis, Tenn.
Argo & Collier Truck Line		Martin, Tenn.
Armstrong Transfer & Storage	280 Poplar St.	Memphis, Tenn.
Bass Transfer Co., Inc.		Watertown, Tenn.
W. F. Cassady		Clinton, Tenn.
Centerville Truck Line		Centerville, Tenn.
Chambers Truck Company, Inc.		McMinnville, Tenn.
Chambers Trucking Co.	East Count St.	Dyersburg, Tenn.
Chandler Transfer & Frt. Line	1107 Chestnut St.	Chattanooga, Tenn.
Wagners Fast Freight Service	613 East 11th St.	Chattanooga, Tenn.
Dhockley Truck Lines		Shelbyville, Tenn.
Cincinnati-Southern Mtr. Exp.	310 4th Ave. S.	Nashville, Tenn.
Cleveland Transfer Company		Cleveland, Tenn.
Covington Express, Inc.	158 East Virginia	Memphis, Tenn.
Cumberland Freight Lines, Inc.	132 5th Ave, S.	Nashville, Tenn.
Joe Davis Truck Line		Winchester, Tenn.
Delta Fast Frt. Line	302 South Main	Memphis, Tenn.
Dixie Motor Express Co.	575 S. Front St.	Memphis, Tenn.
Dotson Motor Express, Inc.	(Mail—Nashville, Tenn.)	Glasgow, Ky.
Duggin Truck Line		Woodbury, Tenn.
ET&WNC Mtr. Transp. Co.		Johnson City, Tenn.
Eagleville Transfer Company		Eagleville, Tenn.
[fol. 65]		
Early Brothers		Lenoir City, Tenn.
Easterwood Transfer Company		Union City, Tenn.
Ellis Moving Co. & Safe Van Lines		Nashville, Tenn.
Franklin Transfer Company		Franklin, Tenn.
Fayetteville Transfer Company	808 Lea Ave.	Nashville, Tenn.
Gobell Truck Line		Hohenwald, Tenn.
Goggin Truck Lines		Shelbyville, Tenn.
D. Graham	Route No. 3, Box 140	Memphis, Tenn.
Hayes Transfer & Freight Line		Clarksville, Tenn.
Hoover Lines, Inc.	Chamberlain St.	Knoxville, Tenn.
Hoover Truck Co., Inc.	415 5th Ave., S.	Nashville, Tenn.
Hoover Lines, Inc.		Nashville, Tenn.
House Motor Express	158 East Virginia	Memphis, Tenn.
Houser Freight Line	200 Randolph St.	Knoxville, Tenn.
Inter-City Trucking Company	575 S. Front St.	Memphis, Tenn.
Jenkins & Sampson Frt. Lines		Lebanon, Tenn.
Johnson Freight Lines, Inc.	1204 Broad St.	Chattanooga, Tenn.
Jones Livery Company		Gallatin, Tenn.
Kemp Transfer Company		Paris, Tenn.
Lawrenceburg Transfer Company		Lawrenceburg, Tenn.
Lewisburg Transfer Co., Inc.		Lewisburg, Tenn.
Luke's Motor Express, Inc.	174 East St.	Memphis, Tenn.
T. J. McBroom		Woodbury, Tenn.
McWhorter Transfer Co.		Chattanooga, Tenn.
Magill Motor Express		Chattanooga, Tenn.
Manners Motor Express	606 5th Ave., S.	Nashville, Tenn.
The Mason & Dixon Lines		Kingsport, Tenn.
A. J. Miller Truck Line	(Memphis, Tenn.)	Clarksdale, Miss.
Morris Transfer		Ashland City, Tenn.
Motor Transfer Company, Inc.	State & 9th Sts.	Bristol, Tenn.
Mt. Pleasant Transfer Co.		Mt. Pleasant, Tenn.
Murfreesboro F'g't . ine Co., Inc.		Murfreesboro, Tenn.
W. W. Murphey		Rossville, Tenn.
Nashville-Old Hickory Frt. Lines	40 Demonbreum St.	Nashville, Tenn.
Neisler Transfer Co.		Lexington, Tenn.
Osborne Interstate Transit		Cleveland, Tenn.
Peoples Transfer Company		Johnson City, Tenn.
Potter Freight Line		Sparta, Tenn.

Name of Carrier	Address	City and State
Pulaski Highway Express	132 5th Ave., S.	Nashville, Tenn.
Red Ball Trucking Company		Martin, Tenn.
Sain Transfer Company		Manchester, Tenn.
Sanders Truck Line		Springfield, Tenn.
Security Transfer & Storage Co.		Chattanooga, Tenn.
Shaff Transfer & Storage Co.	947 Main St.	Nashville, Tenn.
Shipper's Forwarding Company	Mulberry & Huling Sts.	Memphis, Tenn.
Shull Truck Line		Waynesboro, Tenn.
The Silver Fleet of Memphis, Inc.	109 W. McLemore St.	Memphis, Tenn.
Smith Brothers	105 1st Ave., N.	Nashville, Tenn.
Southeastern Motor Truck Lines, Inc.		Nashville, Tenn.
Stephens Truck Line		Dickson, Tenn.
[fol. 66]		
Super Service Motor Freight Co.	808 Lea Ave.	Nashville, Tenn.
Sutton Transfer Co., Inc.		Maryville, Tenn.
Tennessee-Alabama Transport Co.	1107 Chestnut St.	Chattanooga, Tenn.
W. H. Tompkins Company, Inc.	908 3rd Ave., N.	Nashville, Tenn.
Wagner's East Freight Service		Dunlap, Tenn.
Wilson Truck Company	205 5th Ave., S.	Nashville, Tenn.
VERMONT		
Chase Movers		Burlington, Vt.
VIRGINIA		
A. B. C. Storage & Van Co.	746 Granby St.	Norfolk, Va.
W. N. Baisey		Danville, Va.
Booze Truck Lines		Roanoke, Va.
Carolina Norfolk Truck Line, Inc.		Norfolk, Va.
Danville & Durham Motor Fgt. Line	726 Temple Ave.	Danville, Va.
Eastern Motor Express		Roanoke, Va.
Estes Express Lines		Chase City, Va.
Philip Greenberg Motor Express	800 Pine St.	Danville, Va.
Interstate Trucking Co.	62 Commonwealth Ave.	Bristol, Va.
Jackson Transfer & Storage Co.	746 Granby St.	Norfolk, Va.
Johnson Motor Line	541 Bridge St.	Danville, Va.
D. D. Jones Transfer & Warehouse	209 W. Maine St.	Norfolk, Va.
Munday Motor Lines	30-32 Wells Ave., N. E.	Roanoke, Va.
Norfolk, Baltimore & Carolina Line	Piers Nos. 1 & 2, Clyde Line, Water St.	Norfolk, Va.
Norfolk Southern Bus Corp.		Norfolk, Va.
Old Dominion Freight Line	5 S. Broad St.	Richmond, Va.
Overnite Transportation	510 W. Ninth St.	Richmond, Va.
S. P. Rutherford Transfer		Bristol, Va.-Tenn.
Rutherford Freight Lines, Inc.		Bristol, Tenn. (Va.)
J. C. Shelburne Transfer & Stg. Corp.		Richmond, Va.
T. H. Motor Lines		Norfolk, Va.
Turner Motor Lines, Inc.	210 Lynn St.	Danville, Va.

[fol. 67] EXHIBIT H

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 16th day of February, A. D. 1938.

No. MC-86687

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687 (Sub. No. 8)

Seaboard Air Line Railway, Extension of Operations

Upon further consideration of the record and of the petition of Southern Motor Carriers Rate Conference for leave to intervene in the above-entitled matters and good cause therefor appearing;

It is ordered, That the Southern Motor Carriers Rate Conference be, and it is hereby, permitted to intervene and be treated as a party to said matters, with the right to appear and participate in any further proceedings, if any further proceedings are held, and to have notice of and be heard in person or by counsel at oral argument, if oral argument is granted.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT I

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 16th day of February, A. D. 1938.

No. MC-86687 (Sub. Nos. 9 and 10)

Seaboard Air Line Railway Co., Extension of Operations

Upon consideration of the record and of the petition of Southern Motor Carriers Rate Conference for leave to intervene in the above-entitled matter; and good cause therefor appearing;

It is ordered, That Southern Motor Carriers Rate Conference be, and it is hereby, permitted to intervene with the right to file exceptions to the recommended order and [fol. 68] report and to appear and participate in any further proceedings, if any further proceedings are held;

And it is further ordered, That a copy of this order be served upon petitioners and that a copy of this order and of the intervening petition be served upon each of the parties to this proceeding.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT J

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 16th day of February, A. D. 1938.

No. MC-28983

Seaboard Air Line Railway, Common Carrier Application

No. MC-28984

Seaboard Air Line Railway, Common Carrier Application

No. MC-86687 (Sub. Nos. 11 through 17)

Seaboard Air Line Railway, Extension of Operations

Upon further consideration of the record and of the petition of Southern Motor Carriers Rate Conference for leave to intervene in the above-entitled matters and good cause therefor appearing;

It is ordered, That the Southern Motor Carriers Rate Conference be, and it is hereby, permitted to intervene and be treated as a party to said matters, with the right to have notice of and to appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon briefs and at oral argument, if oral argument is granted.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 69] EXHIBIT K

Interstate Commerce Commission

No. MC-86687 (Sub. No. 2)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 4)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 5)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 6)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

Report and order recommended by Joint Board No. 103, composed of R. O. Self, of North Carolina.

Served—November 27, 1937.

Notice to the Parties

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 20 days from date of service shown above, or within such further period as may be authorized for the filing of such exceptions. Otherwise, at the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

[fol. 70] Interstate Commerce Commission

No. MC-86687 (Sub. No. 2)*

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

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*This report also embraces Nos. MC-86687 (Sub. No. 4), MC-86687 (Sub. No. 5), and MC-86687 (Sub. No. 6), all of which are applications by the same applicants seeking authority for extensions of operation.

Submitted—— Decided——

1. Public convenience and necessity found to require extension of operation by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities over a specified route between Hamlet and Sanford, N. C. Certificate granted.

2. Public convenience and necessity found not to require operations by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities over specified routes between Sanford and Raleigh, N. C.; between Hamlet and Wilmington, N. C.; between Monroe and Rutherfordton, N. C.; and between Raleigh and Henderson, N. C. Applications denied.

Charles T. Abeles for applicants.
Edgar Watkins, Jr., and W. P. Horton for interveners.

Report and Orders

Recommended by Joint Board No. 103, Composed of R. O. Self of North Carolina

No. MC-86687 (Sub. No. 2)

By application filed February 23, 1937, Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway, of Norfolk, Va., seek a certificate of public convenience and necessity authorizing them to operate as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between Henderson and Raleigh, N. C., over the following route:

From Henderson, U. S. Highway 1 to Franklinton, N. C.; thence North Carolina Highway 56 to Louisburg, N. C.; thence North Carolina Highway 56 to Franklinton, N. C.; thence U. S. Highway 1 to Raleigh, N. C.; with return trip over the same route and service to all intermediate points which are stations on the railway.

[fol. 71] By other applications filed on the same day, the same applicants seek certificates of public convenience and necessity authorizing them to operate as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities as follows:

No. MC-86687 (Sub. No. 4)

Between Hamlet and Raleigh, N. C., over the following route:

From Hamlet, North Carolina Highway 77 to Marston, N. C.; thence U. S. Highway 1 to Sanford, N. C.; thence U. S. Highways 1 and 501 to Pittsboro, N. C.; thence U. S. Highway 64 and North Carolina Highway 55 to Apex, N. C.; thence U. S. Highway 1 to Raleigh; with return trip over the same route and service to all intermediate points which are stations on the railway.

No. MC-86687 (Sub. No. 5)

Between Hamlet and Wilmington, N. C., over the following route:

From Hamlet, U. S. Highway 74 to Lumberton, N. C.; thence North Carolina Highway 211 to Bolton, N. C.; thence U. S. Highway 74 to Wilmington; with return trip over the same route and service to all intermediate points which are stations on the railway.

No. MC-86687 (Sub. No. 6)

Between Monroe and Rutherfordton, N. C., over the following route:

From Monroe, U. S. Highway 74 to the junction of that highway with North Carolina Highway 27; thence North Carolina Highway 27 to Lincolnton, N. C.; thence North Carolina Highway 150 to the junction of that highway with U. S. Highway 74; thence U. S. Highway 74 to the junction of that highway with North Carolina Highway 120; thence North Carolina Highway 120 to the junction of that highway with U. S. Highway 221; thence U. S. Highway 221 to Caroleen, N. C.; thence by a county road to Ellenboro, N. C.; thence U. S. Highway 74 to Rutherfordton; with return trip over the same route and service to all intermediate points which are stations on the railway.

In accordance with the provisions of the Motor Carrier Act, 1935, the applications were referred to Joint Board No. 103 for hearing and the recommendation of an appropriate order thereon. The cases were consolidated for hear-

ing and will be disposed of in one report. The Southern Motor Carriers Rate Conference, an organization composed of more than 400 members, many of whom claim to operate [fol. 72] in the territory which applicants seek to serve through these proposed operations by motor vehicle, and P. & F. Motor Lines opposed the granting of the applications.

Protestants question the authority of the receivers to file this application, alleging that motor-carrier operation is not authorized by the charter of the corporation, and that they must receive special authority from the Court that appointed them before instituting any legal action. By appropriate court orders, applicants have been appointed receivers of the railway company. Whether they are exceeding their authority is a matter for the determination of the Court that appointed them.

Protestant, the Southern Motor Carriers Rate Conference, has filed a motion requesting that these applications be consolidated with several other applications filed by these applicants and now pending before the Commission. It asks that the consolidated proceeding be referred to an examiner or a different joint board, the order of reference to be determined by the scope of the entire operation. If the operations covered by all the applications are considered as one unified operation, this joint board will not have jurisdiction of the subject matter. Reference of the applications considered in this report were made to this joint board in accordance with the provisions of section 205 of the act. The other applications have not been referred to this board and the motion, therefore, is a matter that must be considered by the Commission.

Applicants now operate motor-carrier service over several routes which parallel the rail lines, and have filed their application for authority under the "grandfather" clause of the act to continue such operation. One such operation is over a route between Hamlet and Monroe.

Applicants desire to establish an auxiliary or supplementary truck service to be coordinated with service by rail in the handling of interstate shipments of less-than-carload freight originating at or destined to stations on the railway. They expect to expedite the movement of less-than-carload shipments by hauling the freight by rail from the shipping point to a point near the destination and transferring it to a truck for completion of delivery. Applicants

expect the institution of this service materially to speed up the handling of less-than-carload freight and also to expedite the movement of carload freight carried in local freight trains by eliminating stops of such trains now necessary in [fol. 73] handling less-than-carload shipments at various stations. In many instances the schedules of local freight trains may be changed so that switching for industries may be performed at times more convenient to the operators of the industries than the present switching service. They do not propose to supplant with trucks the existing rail service, or to transport carload shipments by truck. They believe that this auxiliary service will enable the railway to retain its present traffic and to regain traffic which it formerly carried and contend that such increased traffic as may be gained thereby will not be taken from established motor carriers now operating along the highways proposed to be served. The new business is expected to consist principally of traffic now handled by persons hauling their own freight with their own trucks.

According to applicants' theory, the establishment of the truck service will not injure the present competitive situation of established motor carriers because there is no intention by applicants to handle through freight by truck from and to points beyond the termini of the proposed truck operations or to engage in anything but a truck operation which will be entirely a part of its primary service by rail. They claim the effect of the initiation of the truck service will be no different than if an additional or improved train service should be furnished along the line. However, they do not desire any limitation in such authority as may be granted in this proceeding, which would limit the character of traffic to be handled or would restrict the operation only to the transportation of shipments moving in combined rail and truck service, or to traffic moving by truck only between points on the routes covered by any single application.

Protestants insist that the applicants' purpose in applying for the authority sought is to serve only their convenience and not that of the public; that the proposed service is an attempt to establish a general trucking business as well as a substituted service for the present rail service; that the proposed operations will divert traffic from existing motor carriers to the injury of such carriers and the public; and that the proposed operations will further de-

plete the revenues of the railroad to the injury of the creditors and stockholders thereof. They contend also that the granting of the authority sought will tend to further a monopoly in transportation in the southeastern section of the United States to the detriment of the ship-[fol. 74] ping public; will destroy the inherent advantages of motor transportation; and will be contrary to the policy of Congress as expressed in the act.

Considerable added operating expense to applicants will result from the institution of supplemental truck service, since the truck service is supplemental to rather than a substitution for present rail service. Some economies will result in fuel savings due to the elimination of local stops now necessary in handling less-than-carload freight and in the speeding up of freight train schedules. No reliable estimate of the tonnage which will be carried by truck has been made but, considering all the circumstances, it seems reasonable to conclude that the operation of the trucks will be more economical than the present method of handling less-than-carload shipments by rail; and that the savings will largely offset the additional costs which will be incurred. Applicants' estimate their operating costs for motor vehicles to be approximately 15.2 cents per mile. This estimate takes into consideration most of the necessary elements of such costs and appears to be based upon an operating experience of sufficient length to be reliable. Railway operating revenues for the year ending December 31, 1936, were $30,346,055, net railway operating income, $2,290,583, and gross income including revenue derived from sources other than operations, $3,276,751. Applicants' employes have for several years operated trucks in common carrier service. Such operations are now being conducted over distances aggregating more than 400 miles. The Board is of the opinion that the applicants are fit and able, both financially and as a matter of experience, to secure and maintai proper equipment and to conduct the proposed motor carrier operations in an efficient manner.

Operation Between Raleigh and Henderson

It is proposed to operate two trucks daily in each direction between Raleigh and Henderson, including service on a highway which parallels a branch line of the railway between Franklinton and Louisburg. Southbound, one truck

will leave Henderson at 6:00 A. M., arriving at Raleigh at 10:00 A. M., and another leaving Henderson at 6:15 A. M. will arrive at Raleigh at 9:50 A. M. Northbound, one truck will leave Raleigh at 1:30 A. M., arriving at Henderson at 5:00 A. M., and a second will leave Raleigh at 1:45 P. M., arriving at Henderson at 5:00 P. M. At present applicants [fol. 75] operate a freight car loaded at Hamlet with freight from southern and middle western origins consigned to Raleigh and a similar car from Hamlet to Henderson. Under the proposed truck operation the car loaded at Hamlet for Raleigh would also contain less-than-carload freight for all points between Raleigh and Henderson exclusive of Henderson, and these shipments would be transferred from the car to the truck leaving Raleigh at 1:30 A. M., making possible the delivery of such freight at intermediate points early in the morning.

The present train service consists of only three local trains per week in each direction. On the days when the northbound train is not operated, traffic is carried to Henderson by through freight train, then back-hauled on the southbound local train to points between Raleigh and Henderson. Similarly, a backhaul is necessary from Raleigh on shipments to intermediate points on the days when the southbound train is not operated. The proposed truck service would expedite these local shipments by several hours. Less-than-carload traffic originating at points between Raleigh and Henderson, consigned to Richmond and Portsmouth, Va., would be carried by truck to Henderson and there loaded on freight trains for destination. A saving of as much as 24 hours would be effected thereby.

The same method of handling shipments from such intermediate points to destinations south of Raleigh would produce a similar result. The proposed service would not reduce materially the number of stops to be made by local freight train at intermediate points on these routes because such trains usually carry carload shipments which would still have to be set off, but the delay at the various stations would be shortened by the elimination of the loading and unloading of less-than-carload freight. This saving of time is of particular importance on the branch rail line between Franklinton and Louisburg. Applicants operate a daily mixed train on this branch which carries passengers and mail.

The following motor carrier service is now in operation over the route in question:

Miller Motor Express of Charlotte, N. C., operates over U. S. 1 between Raleigh and Henderson. The witness for this company testified, however, that although it had the right to do so, it had not heretofore handled interstate shipments originating at or destined to points other than Raleigh.

Motor Transport Company of Raleigh operates a daily service between Raleigh and Richmond over U. S. [fol. 76] Highway 1, serving all intermediate points.

Raleigh-Danville Motor Express of Raleigh operates daily service in each direction between Raleigh and Henderson and also from Franklinton to Louisburg and return, serving all intermediate points on the entire routes covered by this application.

Horton Motor Lines operates daily service in each direction over U. S. Highway 1 between Raleigh and Henderson.

Operation Between Hamlet and Raleigh

The proposed service is over highways paralleling the applicants' main line by rail between Hamlet and Raleigh, with service also to Pittsboro, the terminus of a short branch line. A northbound truck will leave Hamlet at 2:00 A. M., arriving at Raleigh at 7:30 A. M., and a southbound truck will leave Raleigh at 8:30 A. M., arriving at Hamlet at 2:05 P. M. The service to Pittsboro would be accomplished by a loop trip of the northbound truck, leaving the main line at Sanford, passing through Pittsboro, and returning to the main line at Apex. The principal benefit expected to be derived from this truck service would be the expedition of deliveries of less-than-carload freight to intermediate stations, and some improvement in train service on outbound traffic.

Traffic from Portsmouth and Richmond to territory between Raleigh and Sanford now moves to Sanford and then is backhauled to intermediate stations. The truck service will eliminate this back-haul and will make deliveries possible as much as 24 hours earlier than at the present. The use of trucks will expedite the movement of freight originating in Charlotte-Monroe territory and destined to inter-

mediate points on this line by about 24 hours.

The following motor carriers now operate over the routes in question:

Miller Motor Express operates daily service in both directions between Sanford and Raleigh, serving all intermediate points.

Motor Transit Company operates regular daily service in both directions between Raleigh and Sanford, serving all intermediate points on the routes.

Helms Motor Express operates from Charlotte to Raleigh and serves all intermediate points on this route between Aberdeen and Raleigh, daily in both directions. It also operates a call and demand service on LCL freight between Aberdeen and Hoffman, N. C., with service to all intermediate points. No regular [fol. 77] schedules operation is conducted between these latter points.

Atlantic States Motor Lines conducts daily service between Richmond and Columbia, but it was not definitely shown that it serves the intermediate points covered by this application. The witness for this carrier stated that it has a line of trucks that serve all the territory in the vicinity of Charlotte and Monroe and if this service includes operation over the routes covered by this application, but is rendered irregularly on call and demand.

There is daily service between Raleigh and Sanford in both directions by at least two motor carriers, but there is no showing of any regular service between Hamlet and Sanford.

Operation Between Hamlet and Wilmington

The proposed operation between Hamlet and Wilmington parallels the rail line between these two points. A truck will leave Wilmington at 7:00 P. M., arriving in Hamlet at 12:30 A. M., and returning will leave Hamlet at 1:30 A. M., arriving at Wilmington at 6:35 A. M. It is expected that this service will greatly relieve the local freight trains handling less-than-carload shipments from and to the 24 intermediate stations on this route by eliminating train stops at many of these points. The present train service consists of two trains from Wilmington to Hamlet, one of

which handles primarily petroleum on a fast schedule, the other handling general traffic. This latter train is supposed to make connection at Hamlet with northbound trains handling through freight, but under present conditions the connection is frequently missed. The truck service is expected to eliminate this occurrence and will permit dispatch of less-than-carload shipments from Wilmington at a later hour than is now possible.

From Hamlet to Wilmington only one freight train per day is operated, which leaves Hamlet at 8:00 P. M., arriving at Wilmington at 1:00 A. M. Truck service is expected to reduce greatly the time of handling less-than-carload shipments destined to Laurinburg, Lumberton, Pembroke, Bladenboro, and Wilmington, which are set-out points for merchandise cars. Much of the freight loaded in these cars comes from points west of Hamlet, principally from Monroe and Charlotte. It is contemplated that train schedules between Charlotte and Hamlet will be revised by leaving Charlotte at a later hour than is at present possible and [fol. 78] effecting a saving of 24 hours in delivery time.

On shipments from the North which are scheduled to reach Hamlet at 5:15 P. M., the connection with the present train service from Hamlet to Wilmington is often missed. Truck service is expected to remedy this delay and delivery may be expedited in some cases by as much as 24 hours. It is estimated that an average of 12 local train stops per day will be eliminated by the use of trucks which, at a fuel saving at $1.50 per stop, would result in a daily economy amounting to $18.00. It is estimated that the truck service will cost $910 per month.

The following truck service is now in operation over the routes in question:

P. & F. Motor Express operates between Wilmington and Charlotte over U. S. Highway 74, paralleling the applicants' proposed service except from points between Bolton and Laurinburg, N. C., between which points the new operation is over U. S. Highway 211 rather than U. S. Highway 74. Daily service is provided in both directions by this carrier.

Miller Motor Express operates daily service between Charlotte and Wilmington over U. S. Highway 74 with a daily schedule from Laurinburg to Fayetteville, N. C., and return. This carrier serves all points between

Lumberton and Bolton on U. S. Highway 211 in addition to all other intermediate points on U. S. Highway 74.

H. H. Hunt & Company operates daily service in both directions between Wilmington and Fayetteville, and Wilmington and Lumberton. It operates from Bolton to Lumberton over U. S. Highway 211 and serves all intermediate points between Lumberton and Wilmington.

Operation Between Monroe and Rutherfordton

The proposed service between Monroe and Rutherfordton will be over highways paralleling the rail line between these points, with an operation between Ellenboro and Caroleen, the latter point being on a branch line. Only less-than-carload shipments to and from stations on the railway which are on the routes in question will be transported by truck. Shipments moving solely between local points on this route will be transported wholly by truck more frequently than over any other proposed route. A truck will leave Rutherfordton at 3:00 P. M., arriving in Monroe at 9:35 P. M., daily, and will leave Monroe at 12:01 A. M., arriving at Rutherfordton at 6:20 A. M. Only one schedule each way per day would be operated.

[fol. 79] The benefits to the railway expected to result from the use of truck service consist principally in the elimination of freight train stops at intermediate stations for the handling of less-than-carload freight and a material saving in time due to the elimination of loading and unloading of less-than-carload shipments at points where the freight trains will continue to stop. At present applicants' local train leaves Bostic Yard, a point about 12 miles east of Rutherfordton, at 4:00 P. M., and is scheduled to arrive at Charlotte at 8:35 P. M. This hour of departure of the train from Bostic is necessary in order to handle shipments from intermediate points which are loaded late in the day, this being of particular importance to cotton mills located at Shelby, Ellenboro, and Cherryville, N. C. Consequently this train is often late and misses connection with other rail lines at Charlotte. A substantial volume of such interchange traffic is regularly handled. The schedule of the truck operation will follow closely that of the train in order to relieve it of its present

less-than-carload service at local intermediate points and expedite its arrival at Charlotte.

A comparable situation exists in connection with the train service between Monroe and Charlotte. Switch-train service leaving Monroe at 3:30 A. M. and due at Charlotte at 4:30 A. M. often misses connections with other lines at Charlotte, delaying the delivery of shipments by as much as 24 hours. Truck service will relieve the switch-train of deliveries at local stations and expedite its movement so that missed connections may be avoided.

At present a local freight train, No. 95, is scheduled to leave Charlotte at 6:00 A. M. for Rutherfordton. This train's departure is dependent upon the arrival of the switch-train from Monroe. It handles carload shipments arriving at Charlotte from Monroe and destined for points beyond Charlotte. Under this schedule merchandise shipments destined to points between Charlotte and Rutherfordton reach their destinations late in the afternoon. The truck is expected to make early morning delivery of these shipments possible and will give early morning delivery of freight carried in package cars to break-bulk points such as Lincolnton, Shelby, and Ellenboro. Cars are loaded at Monroe for Charlotte, Shelby, Lincolnton, and Cherryville, and delivery of that freight is at present effected late in the afternoon or the next morning, whereas transporta-[fol. 80] tion by truck would permit as much as a 24-hour saving on these deliveries. The truck service, by eliminating local stops of the Monroe-Charlotte local freight train, will expedite the movement of shipments moving from Monroe to Charlotte for interchange with connecting lines, and the faster schedule will assure connections at Charlotte on interchange shipments.

Applicants' traffic in the territory is particularly heavy, requiring a considerable amount of local train service. In addition to the switch-train service between Monroe and Charlotte there are two round trips of through freight service. Through service as well as local service is rendered between Charlotte and Bostic. Switch-train service is also rendered out of Lincolnton and Shelby to points in their immediate vicinity. This complicated operating condition is cited by applicants as showing that conditions here are particularly well adapted to the proposed coordination of rail and truck service.

Applicants' truck schedule on this operation is not arranged so as to afford close connections with its present truck service between Monroe and Hamlet. This fact is stressed by applicants as indicating that coordinated truck and rail service is the purpose of this operation rather than the establishment of through truck service by coordinated schedules between the various operations proposed in their several pending applications. However, it is only reasonable to believe that, in this case as in any other, the question of whether or not local shipments will be transported partly by rail, to set-out points for instance, or will be transported from origin to destination entirely by truck will be determined by principles of economy and sound operating practice rather than by any iron-clad determination to transport shipments partly by rail at any cost or inconvenience.

Applicants' present truck service between Monroe and Hamlet has been of great benefit to a hardware company at Monroe in handling shipments from Monroe. The service between Monroe and Rutherfordton is desired by this firm to expedite shipments moving to Rutherfordton and points between Rutherfordton and Charlotte, as well as shipments which move from Monroe to Charlotte for interchange with other rail carriers. This company uses truck service to some extent now, but does not always find such service adequate for its particular purposes. It is not unusual for shippers to desire additional transportation facilities. They usually favor the same regardless of what [fol. 81] effect their initiation might have upon existing carriers. This testimony is not sufficient to convince the Board either of a need for additional service or of the inadequacy of the present service now in operation.

The following motor carriers are now in operation, serving the territory covered by this application:

P. & F. Motor Express operates daily service in each direction between Charlotte and Monroe with as many as three round trips between these points when the traffic demands.

Barnwell Brothers, Incorporated, serves all points on North Carolina Highway 27 between Charlotte and Lincolnton and on North Carolina Highway 15 between Lincolnton and Shelby, daily in both directions. The same service is performed to all points between Shelby

and Rutherfordton with respect to Henrietta and Caroleen. A witness for the company stated that it serves all cotton factories and mills in the general territory between Charlotte and Rutherfordton.

Horton Motor Lines operates daily service in both directions between Charlotte, Shelby, and Rutherfordton, and from its terminal at Shelby performs daily pick-up service to and from all points in contiguous territory.

Atlantic States Motor Lines, Inc., conducts daily service from Charlotte, west to Shelby and Lincolnton on North Carolina Highways 27-A and 150, and serving all points proposed to be served by the applicants in this application, and also furnishes a regular service between Charlotte and Monroe over Highway No. 74.

Several motor carriers conduct scheduled service over all of the routes involved in these applications, except between Hamlet and Sanford, where only an irregular call and demand service is maintained. Practically all of these motor carriers would be willing to interchange traffic with applicants and thereby effect a coordinated rail and truck service. Applicants insist that a proper and efficient coordination of rail and motor carrier service along the routes involved can be accomplished and maintained only by the establishment of a truck service owned by and operated principally for the benefit of the railway. They look with disfavor upon a coordinated rail and truck service established through interchange with independent common carriers for the reason that the railway might be required by the use of such service to short-haul itself.

The declared policy of Congress set forth in section 202 (a) of the act is to "improve the relations between, and the coordination of transportation by and regulation of, motor [fol. 82] carriers and other carriers." It seems apparent that the coordination of transportation which Congress intended is that between carriers operating different kinds of transportation facilities. A rail carrier has no inherent right to change the means of transporting its traffic from its rails to motor vehicles. In seeking to do so, it must assume the burden of showing that the establishment of motor-carrier service by it is required by public convenience and necessity to the same extent that is required of any

other applicant for such authority. A railroad may properly supplement its train service by motor vehicle operations if it can be shown that traffic may be handled thereby in a more economical and efficient manner. However, it has no greater right to establish such a service by invading territory already adequately served by an established motor carrier than would another motor carrier. See *Pennsylvania Truck Lines, Inc.—Control—Barker*, 1 M. C. C. 101, 5 M. C. C. 9 and 49, and *Texas & P. M. T. Co.—Purchase—Johnson*, 5 M. C. C. 89. If these applications should be approved, the new operations would be competitive to some extent, with established motor carriers. Furthermore, it is possible that other railroads operating in this general territory or elsewhere could show that public convenience and necessity to the same extent requires the establishment of like supplemental services along their rail lines. The effect of the precedent, established by the granting of these applications, might be far-reaching both upon the national transportation system and upon traffic conditions on the highways of the country.

The Board is of the opinion that the present motor carrier service over the routes involved in these applications, except as between Hamlet and Sanford, is reasonably adequate for the needs of the public; and establishment of the services proposed herein would inevitably react to the detriment of existing motor carriers by a further division of the available traffic. It would also place upon the highways additional motor trucks where perhaps too many are already operated. If motor-carrier service is better than that offered by the railway on local less-than-carload freight, such shipments should move by truck rather than by rail, or coordinated rail-truck service should be established by utilizing the present rail and truck facilities.

The Joint Board finds that public convenience and necessity require the operation of the service proposed by ap-
[fol. 83] plicant between Hamlet and Sanford over U. S. Highway 1; that applicants are fit, willing, and able properly to perform the duties of a common carrier by motor vehicle; and that a certificate should be granted authorizing such operation.

The Board further finds that the applicants have failed to show that public convenience and necessity require the operation of the service proposed by the applicants over the other routes herein considered; and that the applica-

tions, except as to proposed service between Hamlet and Sanford, should be denied.

It is recommended that the appended orders be entered.

By Joint Board No. 103.

R. O. Self.

Recommended by Joint No. 103, composed of R. O. Self of North Carolina.

R. O. Self.

Order

At a Session of the Interstate Commerce Commission, Division 5, effective on the — day of ——, A. D. 1937.

No. MC-86687 (Sub. No. 2)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 4)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 5)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

No. MC-86687 (Sub. No. 6)

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Extension of Operations.

Investigation of the matters and things involved in this proceeding having been made, said applications upon due notice having been heard by Joint Board No. 103, which board has made and filed a report herein, containing its [fol. 84] findings of fact and the conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, That upon full compliance with all requirements of sections 215 and 217 of the Motor Carrier Act, 1935, and with the rules and regulations promulgated by the Commission thereunder, a certificate of public convenience and necessity be issued to Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway of Norfolk, Va., authorizing them to operate in interstate or foreign commerce as a common carrier by motor

vehicle of general commodities, serving all intermediate points which are stations on the Seaboard Air Line Railway, between Hamlet, N. C., and Sanford, N. C., over the following route:

From Hamlet, North Carolina Highway 77 to Marston, N. C.; thence U. S. Highway 1 to Sanford.

It is further ordered, That the above-described certificate shall be issued upon the condition that the operations authorized thereunder shall be conducted in accordance with all rules, regulations, and requirements relating thereto issued by the Commission under the Motor Carrier Act, 1935.

It is further ordered, That the application in MC-86687 (Sub. No. 4) in all other respects be, and it is hereby, denied and that the applications in MC-86687 (Sub. No. 2), MC-86687 (Sub. No. 5), and MC-86687 (Sub. No. 6) be, and they are hereby, denied.

And it is further ordered, That this order shall be effective on —— ——.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT L

17 MCC-413
Interstate Commerce Commission

No. MC-86687 *

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers)

Motor Operation—Gaston-Garrett, S. C.

Submitted April 20, 1939 Decided July 11, 1939

Public convenience and necessity found to require [fol. 85] operations by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of gen-

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* This report also embraces the other applications in No. MC-86687, Sub. Nos. 1 to 10 inclusive, and Subs. Nos. 15 and 18 described in the appendix hereto.

eral commodities, between certain points in Virginia, North Carolina, South Carolina and Florida, over specified routes. Certificate granted on conditions.

Charles T. Abeles, Murray Allen (Sub. No. 7 only), *W. J. Oven* (Sub. Nos. 9, 10, and 18 only), *W. R. C. Cocke* and *James F. Wright* for applicants.

Edgar Watkins and *N. A. Turner* (No. MC-86687 and Sub. No. 1 only), *W. P. Holden* (Sub. No. 2 only), *William T. Callahan* (Sub. No. 3 only), *Stanton Walker, Leo P. Kitchen* and *Dan R. Schwartz* (Sub. Nos. 9, 10 and 18 only), *J. A. Bliss* (Sub. Nos. 9, 10 and 18 only), *H. C. Loland* (Sub. Nos. 9 and 10 only), *J. C. Steadman* and *McCarthy Crenshaw* (Sub. No. 18 only) for protestants.

Clarence M. Mulholland for Railway Labor Executives Association, intervener.

Report of The Commission, Division 5, Commissioners Eastman, Lee, and Rogers

By Division 5:

The title proceeding herein and the applications in Nos. MC-86687 (Sub. Nos. 1 and 8) were referred to Joint Board No. 188 and the other Sub. Number proceedings were referred as follows: Sub. Nos. 2, 4, 5, 6 and 15 to Joint Board No. 103; Sub. No. 3 to Joint Board No. 2; Sub. No. 7 to Joint Board No. 7; and Sub. Nos. 9, 10 and 18 to Joint Board No. 205. Hearings have been held before the appropriate joint boards and recommended orders issued. The hearings in Sub. Nos. 2, 4, 5 and 6 were consolidated before Joint Board No. 103 and those in Sub. Nos. 9 and 10 before Joint Board No. 205.

Exceptions were filed by protestants to the orders recommended by the joint boards in the title proceeding and in Sub. Nos. 3, 4, 8 and 18, and applicants replied. Applicants filed exceptions to the orders recommended by the joint boards in Sub. Nos. 1, 2, 4, 5, 6 and 7, and both applicants and protestants filed exceptions to the recommended orders in Sub. Nos. 9 and 10 and applicants replied. No exceptions were filed to the order recommended in Sub. No. 15 but we stayed the order. The parties have been heard in oral argument with respect to the title proceeding and Sub. Nos. 1 to 8, inclusive, which were consolidated therewith for that purpose, and oral argument has also been

held in Sub. No. 18. Since applicants are the same in all [fol. 86] the proceedings and the issues are similar the cases will be disposed of in one report. Our conclusions differ from those recommended by the joint boards in Sub. Nos. 1, 2, 4, 5, 6 and 7.

Applicants are the Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, receivers). By the application in the title proceeding, filed February 23, 1937, they seek a certificate of public convenience and necessity authorizing operations as a common carrier by motor vehicle in the transportation of general commodities between Gaston and Garnett, S. C., over the route shown in the appendix, serving stations on the line of the Seaboard Air Line Railway, hereinafter called the Railway. By the other applications, filed respectively on the dates shown in the appendix, applicant seeks similar authority between other points in South Carolina, Virginia, North Carolina and Florida, over specified routes, as described in the appendix, serving all intermediate and certain off-route points, which are stations on the line of the Railway. All of the applications, except Sub. Nos. 15 and 18, were opposed by the Southern Motor Carriers Rate Conference, and certain of them by individual motor carriers and others,* as shown in the margin. The Brotherhood of Railway Trainmen oppose the application in Sub. No. 3 and the Railway Labor Executives Association intervened in all of the proceedings.

Two jurisdictional questions, raised by protestants, will be considered first. One relates to the authority of the receivers of the Railway to conduct motor carrier operations and our jurisdiction to grant authority therefor, and the other is whether the applications were assigned for hearing before proper joint boards. There appears to be no ques-

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* New South Express Lines in the title proceeding and Sub. No. 1; P. & F. Motor Lines in Sub. Nos. 2, 4, 5, and 6; Acme Freight Lines, Cooper Truck Lines, Holstein and Son, Goodall Brothers Truck Line, Blue's Truck Lines, and Union Bus Company in Sub. Nos. 9 and 10; McJunkin Truck & Bus Line in Sub. No. 18; K. & L. Transportation Company, Inc., L. & L. Freight Lines, Inc., and R. C. Motor Lines, Inc., in Sub. Nos. 9, 10, and 18; and Great Southern Trucking Company, St. John's River Line Company, and Tamiami Trail Tours, Inc., in Sub. Nos. 9, 10, and 18.

tion as to the appointment of the receivers by a court of appropriate jurisdiction. As protestants contend, the receivers, in the conduct of the Railway's operations, are limited by the authority conferred by the corporation charter, but the question as to the proper scope of the corporate power is one which this Commission is not required to determine in proceedings such as those under consideration. A contention similar to that of protestants herein was considered in *Claiborne-Annapolis Ferry Co.* v. *United States*, 285 [fol. 87] U. S. 382. There a railroad company sought a certificate from this Commission under section 1 (18) of Part I of the Interstate Commerce Act, authorizing the construction and operation by it of a ferry for the transportation of passengers across Chesapeake Bay. The Supreme Court said:

> Whether the railway company has corporate power to operate the proposed ferry is a question which cannot be considered in this proceeding. We think Congress never intended to impose upon the Interstate Commerce Commission the duty of determining matters of this nature before granting or withholding assent to the construction of an extension.

As previously noted, the application in the title proceeding and the first seven sub. number applications were filed on the same date. Except for the route between Gaston and Garnett, and one between Monroe and Rutherfordton, N. C., included in the Sub. No. 6 application, the proposed routes included in those applications join, and the Monroe-Rutherfordton route connects with a route between Monroe and Hamlet, N. C., in respect of which applicants have filed with us an application for registration in Docket No. MC-28984. Hamlet is shown as a termini of the Hamlet-Columbia, S. C., route included in the Sub. No. 3 application. Other than the Sub. No. 3 case (Hamlet-Columbia route) and the Sub. No. 7 case (Richmond, Va.-Henderson, N. C., route), the applications covering routes solely between points in North Carolina or South Carolina, respectively, were set down for hearing before joint boards composed solely of members from such States. Protestant, Southern Motor Carriers Rate Conference, at the several hearings moved for discontinuance thereof, and consolidation of the various proceedings for hearing before a joint board composed of mem-

bers from Virginia, North Carolina and South Carolina, contending that operations in three States were involved. Protestants also filed a similar motion with us, which was denied, and have argued the question orally. Applicant, on the other hand, contended that the South Carolina and North Carolina routes, respectively, except the McBee-Sumter, S. C., route (Sub. No. 1 case) were exempt from the certificate requirements of section 206 (a) of the act, since applicants had been granted certificates therefor by North Carolina and South Carolina. Applicants, at the time of hearing, had received no certificate authorizing operations between McBee and Sumter. It may be noted also that protestants filed similar motions for consolidation of the proceedings involved in Sub. Nos. 9, 10 and 18, arguing [fol. 88] that all of the applications should be heard together before an appropriate joint board or an examiner.

The particular provisions of the act upon which protestants rely are contained in section 205 (b) and, so far as here pertinent, read as follows:

> The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states * * * refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations: Applications for certificates, permits or licenses. * * * The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conduced:

It will be noted that the words "such matter" are in the singular, and clearly relate back to the preceding language, "any of the following matters arising in the administration of this part with respect to such operations." Thus understood, it seems beyond argument that it relates to any one of the matters mentioned, rather than to a number of them, and hence refers to an individual application. In other words, the language "motor-carrier or brokerage operations involved in such matter" clearly means "motor-carrier or brokerage operations involved in such application." If such application covers an operation confined within the

boundaries of a single State, it is obviously the "matter" which we are required to refer to a joint board composed solely of one member from that State.

It is true, as protestants point out, that a possible result of granting the applications included in the title proceeding, and Sub. Numbers 1 to 8, which include routes between Richmond and Columbia, would be a unified service in three States, and that applicants may have intended such result when the several applications were filed. However, it is manifestly impossible to accurately predict such a result when applications for certificates or permits are filed with us, or to determine the existence of such an intent on the part of the party filing the applications. In the majority of cases such a result would become apparent only upon hearing the applications. On the other hand, the hearing or hearings might disclose that a unified operation was not contemplated, even though the same party filed a number of applications covering operations in adjoining States. In the latter event, if we had assigned the applications before [fol. 89] a two or three-member board, as the case might be, in advance of any certain knowledge that a unified operation in more than one State was contemplated, we would be under the necessity of reassigning the applications before the proper joint boards.

We conclude that there is no legal basis for the opposition raised by protestants to the composition of the joint boards which heard the several applications. Protestants, however, in addition to the jurisdictional argument, also contend that, due to the assignment of the applications before separate joint boards, an incomplete picture of the contemplated operations has been presented. In this connection they refer to the refusals of certain of the joint boards to receive evidence relating to service over routes other than the particular ones embraced in the applications before such joint boards. However, we now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings, and we perceive no reason why we cannot properly consider and dispose of the applications on their merits upon the records made. Our attention has been directed to no instance wherein the adverse ruling of the joint board respecting evidence relating to operations over other than the route before the board has been prejudicial to protestants.

The proposed routes parallel the lines of the Railway, and applicants propose to substitute truck service for the existing less-than-carload freight service of the Railway between stations on its lines. They stress the fact that there will be no reduction in the number of trains now being operated, but they do assert that stops at other than set-out points will be greatly reduced, and that such stops will be eliminated in many instances. In a number of cases existing train schedules will be revised to permit train movements at night, thus affording delivery of less-than-carload shipments early in the day. Applicants assert that at points where trains would continue to stop, material saving in time would be effected by relieving train crews of the necessity of handling the less-than-carload shipments.

The proposed truck schedules are to be so coordinated with applicants' regular train service from important origins as to expedite delivery by as much as 36 hours in some instances. The bulk of the less-than-carload movement is to and from small points intermediate to larger terminals and is now carried on local trains. The volume of [fol. 90] such traffic is said to be insufficient to warrant frequent train service and the large number of stops necessarily slows the schedules, subjecting the traffic to delays which are annoying to shippers and receivers, and detrimental to the traffic of the Railway and which cannot be eliminated except by the addition of trains at an expense which is not warranted by the amount of traffic involved.

Applicants expect to continue to utilize rail transportation for most of the line-haul between the points served by them, but less-than-carload shipments are to be transferred to trucks at stations near the final destination of the shipments. By relieving local trains from the handling of such shipments except to and from points where cars are set out, applicants expect to expedite local train schedules and speed up the handling of carload traffic. In that way they expect to eliminate failures to make connecting train schedules, which are now said to be frequent occurrences. The change to night schedules where possible is said to be favored by industries located on the Railway, since day switching interferes with plant operation. Substantial savings in fuel are anticipated through elimination of station stops and reduction of the number of cars in local trains.

No. MC-86687 and (Sub. Nos. 1 to 8) —

Between Gaston and Garnett, S. C.—In the proposed service between Gaston and Garnett, the motor truck would start at Estill, S. C., 10 miles north of Garnett, and maintain one round-trip schedule per day, leaving Estill on the northbound trip at 7:00 A. M., arriving at Gaston at 10:15 A. M., Garnett at 1:55 P. M., and returning to Estill at 2:30 P. M. Rail cars carrying less-than-carload traffic from points north of Garnett consigned to stations on the route will be set out at Swansea, North, Denmark and Fairfax, S. C., and cars from southern points will be set out at Estill, Fairfax and Denmark. The proposed route is about 96 miles in length and about 15 stations are located thereon, in addition to the set-out points just named. Applicants propose to distribute the less-than-carload traffic from the set-out points to the other stations. The schedules of the local train now making deliveries at points on the route would be changed to a night operation, thus affording shippers of carload freight between Savannah, Ga., and Columbia, S. C., the advantage of overnight service, and which would also make possible later loadings of local freight trains. Perishable traffic will benefit through later loadings for earlier delivery to eastern markets.

[fol. 91] Applicants estimate that about 14 stops of the local freight train per day would be eliminated by the proposed service, which, at an estimated cost of $1.50 per stop, would be equivalent to a monthly saving of $546, as compared with the estimated cost of truck operation of $350 per month.

The proposed route is now served by certain motor carriers as follows: The New South Express Lines operate between Swansea and North, a distance of 9 miles, and also serves the intermediate point of Woodward, S. C. The Nilson Motor Express of Walterboro, S. C., operates between Denmark and Columbia, 35 miles, serving all intermediate points. The same carrier also operates between Walterboro and Augusta, Ga., in which operation it crosses the proposed route at Fairfax, where it interchanges traffic with the Fleming Truck line of Savannah, which latter carrier operates between Fairfax and Savannah for about 27 miles of the considered route. The Lowe Transfer Company of Aiken, S. C., operates between Fairfax and Olar, S. C., for a distance of about 18 miles.

McBee to Sumter, S. C.—The route sought by the Sub. No. 1 application is 134 miles long, and over highways paralleling a branch line of the Railway to Hartsville and Darlington, S. C. At Hartsville another branch extends to Sumter and Timmonsville, S. C. The present local freight train schedules permit departures from McBee at 9:55 A. M., arrival at Hartsville at 10:50 A. M., and departure therefrom at 10:55 A. M., with arrival at Timmonsville at 12:10 P. M. Another local train leaves Hartsville at 11:15 A. M. and arrives at Sumter at 1:15 P. M. A return train leaves Hartsville at 11:00 A. M. and arrives at Darlington at 11:40 A. M. In the proposed truck schedule the vehicle would leave McBee at 6:00 A. M., proceed via Timmonsville, Hartsville and Sumter, and return to Bishopville, S. C., a station on the Hartsville-Sumter branch of the Railway, from whence it would proceed to McBee via Darlington. Under the present rail operation shipments over applicants' main line at McBee arrive at Sumter at 1:15 P. M. or later, whereas under the proposed truck operation it is anticipated that a departure from McBee at 6:00 A. M. would permit arrival at Sumter at 8:05 A. M., with corresponding reductions in time at the other points on the proposed route. Applicants contend that, due to the local train carrying passengers and mail in addition to freight, the schedule cannot be changed to conform [fol. 92] primarily to the needs of shippers of freight. Additional train service is not justified, due to the light volume of traffic in the territory.

The New South Express Lines operate a truck daily from Sumter to Cheraw, S. C., via Bishopville and Hartsville, and provide daily service to Darlington and all other points on the proposed route except Lamar, S. C. Carroll Jordan, of Hartsville, provides regular route service to all of the considered points. An irregular common carrier service is furnished by six other truck lines. Some 15 or more additional truck lines operate in the territory surrounding Hartsville.

The joint board recommended denial of this application because of the light volume of traffic involved and because the established motor carrier service in the territory was adequate. The board also predicated its recommended denial partly on applicants' failure to demonstrate that operating economies would result from the proposed operation.

On exceptions, applicants contend that the volume of less-than-carload traffic to and from points on the proposed route is sufficient to justify the operation of one round trip per day. They point out that in 1936, 685 tons of less-than-carload traffic moved into Sumter and 223 tons moved out from that point; that Bishopville originated or terminated 503 tons, Darlington 625 tons, Timmonsville 440 tons, and Lydia 27 tons, or a total of about 2,503 tons of less-than-carload traffic. They assert that it would be difficult to determine whether the proposed service would be profitable in and of itself, and they argue that benefits resulting to shippers from the improved service are sufficient to justify the authority sought, without demonstrating that operating economies would result therefrom. Their reasons for refusing to utilize existing motor-carrier service on the various routes will be hereinafter discussed.

Between Raleigh and Henderson, N. C.—Applicants propose to operate two trucks daily in each direction between Raleigh and Henderson, including service paralleling a branch line of the railway between Franklinton and Louisburg. In the southbound operation a truck would leave Henderson at 6 A. M. and arrive at Raleigh at 10 A. M. Another truck would leave Henderson at 6:15 A. M. and arrive at Raleigh at 9:50 A. M. In the northbound operation one truck would leave Raleigh at 1:30 A. M. and arrive at Henderson at 5 A. M., and a second truck would leave Raleigh [fol. 93] at 1:45 P. M. and arrive at Henderson at 5 P. M. At the present time, applicants operate a freight car loaded at Hamlet, N. C., with traffic from southern and middle western origins, consigned to Raleigh, and another car consigned to Henderson. Under the proposed truck operation the car loaded at Hamlet for Raleigh would also contain less-than-carload freight for all points between Raleigh and Henderson, exclusive of the latter point, and would be transferred to the truck leaving Raleigh at 1:30 A. M., making possible delivery of such freight at intermediate points early in the day. The present train service consists of three local trains per week in each direction between the considered points. When the northbound train is not operated, traffic is transported to Henderson by through freight train and then back-hauled by the southbound local train to points between Raleigh and Henderson. A back-haul is also necessary from Raleigh to intermediate points on the days when

the southbound train is not operated. Applicants expect to expedite these local shipments through the proposed service. On less-than-carload traffic originated at points between Raleigh and Henderson and consigned to Richmond and Portsmouth, Va., applicants expect to save about 24 hours' time through transporting the traffic to Henderson and forwarding from that point by freight trains.

The Miller Motor Express of Charlotte, N. C., operates over U. S. Highway 1 between Raleigh and Henderson. However, it appears that the company has never handled interstate traffic originating at or destined to points other than Raleigh. The Motor Transport Company of Raleigh operates a daily service between Raleigh and Richmond over U.S. Highway 1, serving all intermediate points. The Raleigh-Danville Motor Express of Raleigh operates daily trips in each direction between Raleigh and Henderson, and also between Franklinton and Louisburg, serving all intermediate points. The Portland Motor Lines operate a daily service between Raleigh and Henderson.

Between Hamlet, N. C., and Columbia, S. C.—Applicants' present rail service between Hamlet and Columbia consists of one local freight train southbound from Hamlet at 6:30 P. M., which is scheduled to arrive at Columbia at 11:35 P. M., and a northbound train which leaves Columbia at 7:00 P. M. and is due in Hamlet at 10:00 P. M. These two trains provide all main-line service except between Hamlet [fol. 94] and Cheraw, S. C., where local service is provided by a switching train. When there is a heavy movement of traffic the southbound train is frequently late and the northbound train often arrives at Hamlet too late to make connections with through northbound trains carrying perishable commodities. This, in turn, delays the delivery of freight to eastern and middle-western markets by as much as 24 hours. In the proposed truck service, the vehicle would leave Columbia at 7:00 P. M. and arrive at Hamlet at 11:20 P. M. On the return movement the truck would leave Hamlet about 1:00 A. M. and follow the main line of the railway to Cheraw, whence it would parallel a branch line operated by the Railway to Pageland and Jefferson, S. C., the latter point a terminus of another branch line. For the remainder of the trip the truck would parallel the main line to Columbia, where it is scheduled to arrive at 6:10 A. M. Through the proposed service applicants ex-

pect to eliminate a number of stops at small intermediate stations and to avoid failures to make connections at Hamlet with the through northbound trains.

In protestants' exceptions to the order of the joint board recommending granting the authority sought in the Sub. No. 3 application, they point out that in the hearings on the title proceedings and in Sub. Nos. 1, 2, 4, 5 and 6, it was disclosed that three motor carriers now operate between a number of points on the route between Hamlet and Columbia and that one carrier served the entire route. Protestants, therefore, contend that there is ample service over the proposed route. However, the service of the other motor carriers is entirely by motor vehicle, while the proposed service contemplates either a prior or subsequent haul over the Railway.

Between Hamlet and Raleigh, N. C.—In the proposed service between Hamlet and Raleigh, applicants' schedule would afford departure from Hamlet at 2:00 A. M. with arrival at Raleigh at 7:30 A. M., departure from Raleigh at 8:30 A. M., and arrival at Hamlet at 2:05 P. M. Service would be afforded to Pittsboro, N. C., on a short branch line, by leaving the principal route at Sanford, N. C., serving Pittsboro, and returning to the route at Apex, N. C. Traffic from Portsmouth and Richmond to the territory between Raleigh and Sanford now moves to Sanford and is back-hauled to intermediate points. The proposed service would eliminate the back-haul and applicants expect that it will speed up delivery by as much as 24 hours.

[fol. 95] The Miller Motor Express and the Motor Transit Company operate daily service in both directions between Sanford and Raleigh, serving all intermediate points on the route. The Helms Motor Express operates from Charlotte to Raleigh, serving all intermediate points on the route between Aberdeen and Raleigh, and a call-and-demand service on less-than-carload freight between Aberdeen and Hoffman, N. C., serving all intermediate points. The Atlantic States Motor Lines operate daily service between Richmond and Columbia, but it is not clear that it serves intermediate points. There is no showing of any regular motor-carrier service over the route between Hamlet and Sanford.

Between Hamlet and Wilmington, N. C.—The schedule of this operation would provide departure from Wilmington

at 7:00 P. M., arrival at Hamlet at 12:30 A. M., departure therefrom at 1:30 A. M., and return to Wilmington at 6:35 A. M. The present train service consists of two trains from Wilmington to Hamlet, one of which transports principally petroleum on a through schedule. The other train handles general traffic and is supposed to afford a connection at Hamlet with northbound through trains, but at present frequently fails to make this connection. The proposed service is expected to eliminate delays due to such failure. Applicants contemplate revising train schedules between Charlotte and Hamlet to afford a later departure from Charlotte than is possible at present, and it is anticipated that about a day's time in delivery will be saved. Applicants also expect to save about $18 per day through the elimination of local train stops, and that the truck service in the Hamlet to Wilmington operation will cost about $910 per month.

The route between Hamlet and Wilmington is now served by three motor carriers. The P. & P. Motor Express and the Miller Motor Express operate between Charlotte and Wilmington over U. S. Highway 74. The former carrier parallels applicants' proposed service except at points between Bolton and Laurinburg, N. C. The latter carrier provides a daily service from Laurinburg to Fayetteville, N. C., and serves all points between Lumberton, N. C., and Bolton, as well as all intermediate points on U. S. Highway 74. The H. H. Hunt & Company operates a daily service between Wilmington and Fayetteville and between Wilmington and Lumberton. This carrier also operates between Bolton and Lumberton, and serves all intermediate points between the latter point and Wilmington.

[fol. 96] *Between Monroe and Rutherfordton, N. C.*—Applicants expect to transport shipments between local points along this route by truck more frequently than over the other proposed routes. The proposed truck schedule affords a departure from Rutherfordton at 3:00 P. M. and arrival in Monroe at 9:35 P. M., and on the return trip a departure from Monroe at 12:01 A. M., with arrival at Rutherfordton at 6:20 A. M. In the existing freight train service the local train leaves Bostick Yard, N. C., 12 miles east of Rutherfordton, at 4:00 P. M. and is scheduled to arrive at Charlotte at 8:35 P. M. The schedule has been fixed in order to handle shipments for cotton mills at

Shelby, Ellenboro and Cherryville, N. C. As a result, the train frequently arrives at Charlotte too late to make connection with other lines at that point, where a substantial volume of interchange traffic is handled. A similar situation is said to exist in the present train service between Monroe and Charlotte. Applicants anticipate that the proposed truck service, through the elimination of local stops of the Monroe-Charlotte local train, will expedite the movement of traffic to Charlotte for interchange and thus prevent failure to make connections at Charlotte on the interchange traffic.

Four motor carriers operate over all or portions of the route between Monroe and Rutherfordton. The P. & F. Motor Express provides as many as three round trips daily between Charlotte and Monroe. Barnwell Brothers, Incorporated, serve all points between Charlotte and Lincolnton, N. C., on North Carolina Highway 27, and between Lincolnton and Shelby, N. C., on North Carolina Highway 15. This concern serves all cotton factories and mills in the general territory between Charlotte and Rutherfordton. The Horton Motor Lines provides a daily service between Charlotte, Shelby and Rutherfordton, and a daily pick-up service in the contiguous territory from its terminal at Shelby. The Atlantic States Motor Lines, Inc., provides daily service from Charlotte to Shelby and Lincolnton, on North Carolina Highways 27-A and 150, and also operates regularly between Charlotte and Monroe over U. S. Highway 74.

The joint board recommended denial of the applications covered by Sub. Nos. 2, 4, 5 and 6, except as to the service proposed between Hamlet and Sanford, N. C., on the ground that the existing motor-carrier service was adequate, except between those two points. Applicants, however, point out that the schedules of the motor carriers have not been shown of record and they contend that proper and efficient [fol. 97] coordinated service can be maintained only by truck operation which is controlled and directed by the Railway.

Between Richmond, Va., and Henderson, N. C.—In the service proposed between Richmond and Henderson, applicants' schedules contemplate departure of the truck from Richmond at 12:00 midnight and arrival at Henderson at 8:00 A. M., on the southbound trip, and departure from

Henderson at 7:00 A. M. and arrival at Richmond at 4:00 P. M. on the northbound trip. One trip in each direction would be made daily. Applicants are now operating local train service from Richmond to Henderson but no local service from Henderson to Richmond. In the southbound service two trains are operated, one between Richmond and Norlina, N. C., leaving Richmond at 6:25 A. M. and arriving at Norlina at 4:15 P. M. The other train leaves Norlina at 11:00 A. M. and arrives at Henderson at 2:00 P. M.

In the proposed operation, the southbound freight for points between Richmond and Henderson, excluding the latter point, will be loaded on the truck leaving Richmond at 12:00 midnight. The same vehicle will transport freight from Petersburg, Va., consigned to points south thereof other than Henderson. The northbound truck will handle traffic from Henderson destined to local stations south of Richmond. The schedules permit arrival of the southbound truck at Henderson and all intermediate stations in the morning. In the northbound service deliveries would be made at points between Henderson and Richmond prior to 4:00 P. M. In the present rail service, shipments delivered at the Richmond station during the day do not leave until 6:25 A. M. on the following morning, and may reach a representative point, such as McKenney, Va., as late as 11:30 A. M. Under the proposed truck schedules the shipments will arrive at McKenney in time for early morning delivery. Due to the absence of local train service from Henderson to Richmond the transportation of less than carload shipments entails an extremely circuitous movement. For example, traffic from Grayson, N. C., 4 miles north of Henderson, destined to McKenney, Va., and received prior to 1:30 P. M. for loading in a southbound car for Henderson is there transferred to a car billed to Petersburg, which leaves Henderson at 9:00 P. M., arrives at Petersburg at 4:00 A. M., departs therefrom at 8:30 A. M. and arrives at McKenney at approximately 11:30 A. M. [fol. 98] This movement involves one transfer and two back-hauls. The proposed truck service would permit loading the shipment at Grayson at 7:15 A. M. in the morning following its receipt and a direct haul to McKenney. Applicants expect to save between 24 and 36 hours' time in service to many points by the proposed truck operation.

The proposed service is supported by a merchant located at Lacrosse, Va., and by the North American Button Manufacturing Company, of McKenney, Va. Although the joint board found that the proposed service would permit a more expeditious and economical handling of traffic than the present rail service, it recommended denial of the application on the ground that the service of the existing motor carriers between the considered points was adequate.

Between Greenwood and Great Falls, S. C.—Applicants propose to operate truck service over this route, distance about 100 miles, in order to expedite the handling of less-than-carload freight at stations between Greenwood and Great Falls. The route parallels the Railway except between Chester, S. C., and Great Falls, but no stops would be made between those points. The present train service does not permit adequate service to the smaller towns on the route. A local freight train is now operated southbound between points on the proposed route daily except Sunday, which leaves Monroe, N. C., at 10:00 A. M. and arrives at Greenwood at 10:00 P. M. No local train is operated northbound over the route which loads or unloads less-than-car-load merchandise, and this necessitates handling such merchandise on through trains which set out the cars at certain points. They are then handled back for local delivery by the southbound local train, thus involving an expensive backhaul. For example, local shipments from Atlanta, Ga., destined for Cross Hill, N. C., 15 miles north of Greenwood, leave Atlanta at 10:30 P. M., on a mixed passenger train, arrive at Clinton, S. C., a set-off point, at 4:44 A. M., and are moved back to Cross Hill by a local freight which arrives at Cross Hill at 7:00 P. M.

In the proposed service the truck would leave Greenwood at 5:30 A. M., arrive at Chester, S. C., at 10:30 A. M., depart therefrom at 11:00 A. M., and arrive at Great Falls at 12:00 noon. On the return trip the truck would depart from Great Falls at 1:00 P. M., Chester 2:15 P. M., and arrive at Greenwood at 5:30 P. M. In this service shipments [fol. 99] from Atlanta to Cross Hill, arriving on the train from Atlanta at Greenwood at 3:50 A. M., would leave the latter point at 5:30 A. M. and arrive at Cross Hill at 6:00 A. M., a saving of 24 hours time. Applicants expect to save from 12 to 24 hours in the time of delivery of less-than-carload merchandise at all points and to save in oper-

ating expense through the elimination of stops at small stations for loading and unloading such merchandise.

Sub. Nos. 9 and 10

These applications, covering routes from Jacksonville to Live Oak and from Live Oak to River Junction, Fla., respectively, in reality bring in issue one operation. The proposed route parallels the Railway throughout its entire distance except between Greenville and Lloyd, Fla., and between Tallahassee and Qunicy, Fla. The total distance over the route is approximately 225 miles. In the present rail service the westbound train is scheduled to leave Jacksonville at 8:00 P. M. and arrive at River Junction at 8:00 A. M. the following morning. Another train is scheduled to leave Jacksonville at 9:10 A. M. and arrive at Tallahassee, Fla., at 4:30 P. M. At the latter point this train digresses from the line to River Junction and serves Bainbridge and Montgomery, Fla. Another train scheduled to leave Jacksonville about 8:10 P. M. performs local service between Jacksonville and Live Oak, and at the latter point makes connection with the Live Oak, Perry & Gulf Railroad. This train arrives in Live Oak at 2:00 A. M. and on the return trip leaves at 2:30 A. M. and arrives in Jacksonville about 8:00 A. M.

In the eastbound service, from Live Oak to Jacksonville, one train which makes connection with a train of the Louisville & Nashville Railway at River Junction leaves the latter point at 10:00 A. M. and is scheduled to arrive in Jacksonville at 9:30 P. M. Another train operated from Montgomery, Ala., via Bainbridge, Fla., is scheduled to leave the latter point at 6:15 P. M. and arrive in Tallahassee at 7:45 P. M. and to leave Tallahassee at 8:15 P. M. and arrive in Jacksonville at 2:30 A. M. the following morning.

The proposed truck service is to be operated daily, except Sunday, and in the westbound schedule the truck would leave Jacksonville at 7:00 P. M., arrive in Live Oak at 11:30 P. M., depart from Live Oak at 11:45 P. M., and arrive at River Junction at 6:15 A. M. The arrival at River Junction [fol. 100] is said to be sufficiently early to make connection with a train of the Appalachicola Northern Railroad which departs from River Junction for Port St. Joe, Fla., and intermediate points at 7:10 A. M. In the eastbound schedule the truck would leave River Junction at 11:00

A. M., arrive at Live Oak at 5:00 P. M., depart therefrom at 12:00 midnight, and arrive at Jacksonville at 4:00 A. M.

Applicants anticipate considerable savings in time of delivery by the proposed service and to effect operating economies through a reduction in the number of freight cars handling less-than-carload shipments. The speeding up of applicants' existing schedules is illustrated by the following example: A shipment arriving at Jacksonville from an interstate origin during the day, consigned to Monticello, Fla., is now transported on the train which is scheduled to leave Jacksonville at 8:00 P. M. The shipment is set out at Drifton, Fla., at 3:50 A. M. the following morning and remains at that point until picked up by an eastbound train at 2:45 P. M. of the same day and is delivered at Monticello about 3:30 P. M. In the proposed truck service the shipment would move out of Jacksonville at 7:00 P. M. on the evening of its arrival at that point, and would be delivered at Monticello at 3:05 A. M. the following morning, or a full day in advance of the present rail service. Applicants estimate the savings to be accomplished through decrease in the number of cars used in the local service at $3,000 to $3,500 per year.

Protestants' exceptions to the recommended orders of the joint board authorizing the service between Jacksonville and River Junction are principally to the effect that the service can be performed by the existing motor carriers. Applicants, however, contend that since their service will merely be substituted for existing rail service, the traffic is of the character which protestants would ordinarily have no opportunity to obtain, and could not, therefore, be considered as traffic diverted from the motor carriers. Applicants also point out that no one motor carrier now serves the entire route between Jacksonville and River Junction.

Sub. No. 15

The service proposed between Monroe and Waxhaw, N. C., is an extension of applicants' present service between Monroe and Hamlet, N. C., which has been in effect for a number [fol. 101] of years. The operation involves an extension of only 12.5 miles to Waxhaw. The proposed schedule contemplates departure of a truck from Monroe at 8:00 A. M., arrival at Waxhaw at 8:40 A. M., and departure from the latter point at 9:20 A. M. and arrival at Monroe at 10:00

A. M. of the same day. Operations will be conducted daily except Sunday. The intermediate stations of Houston and Mineral Springs, N. C., will be served in addition to Waxhaw.

The volume of traffic between the considered points at the present time does not justify daily train service and applicants have been maintaining a tri-weekly local train service. The southbound train leaves Monroe at 7:50 A. M. on Tuesdays, Thursdays and Saturdays, and arrives at Waxhaw about 8:40 A. M. The northbound train departs from Greenwood, 10 miles south of Waxhaw, at 8:00 A. M. Mondays, Wednesdays and Fridays, and arrives at Waxhaw about 4:00 P. M. and Monroe about 5:00 P. M. Applicants also operate through trains over the route which handle some shipments destined to these stations, although the stations are not directly served. The present service involves considerable indirect and back-haul service which will be avoided by the proposed operation. Less-than-carload merchandise consigned to the considered stations moves principally from interstate origins beyond Charlotte, N. C., Hamlet, and Atlanta, Ga., in package cars which break bulk at those points. Shipments consigned to Waxhaw arriving at Charlotte on Saturdays are not delivered until the following Tuesday in the present local service. Similar delays are encountered in connection with traffic from points on the proposed route.

As stated, applicants have been operating by motor vehicle between Hamlet and Monroe. They state that this operation has been quite economical and that for a period of 56 months the vehicle in operation totaled 148,872 miles, at a total average cost of 15.2 cents per truck-mile. Applicants feel that this figure will be a reasonably accurate estimate for the cost of operation of the proposed extension to Waxhaw.

Sub. No. 18

Since November 20, 1937, applicants have conducted a motor vehicle operation between Jacksonville and Fernandina, Fla., via Yulee, Fla., for the transportation of intrastate traffic. By this application they seek authority to [fol. 102] establish interstate service over the described route, paralleling the Railway and serving only stations on its line. Applicants' present train service to Fernandina

is operated to that point from Baldwin, Fla., and consists of one round trip daily with scheduled arrival at Fernandina at 8:15 A. M. and departure therefrom at 8:45 A. M. It is said to be necessary to handle existing traffic to Fernandina via Baldwin, rather than over the more direct route through Yulee, because of an existing labor contract which cannot be abrogated.

In applicants' present rail service a less-than-carload shipment ordinarily moving through Jacksonville to Fernandina from out-of-state points, and arriving at Jacksonville early in the day, is transferred to a Fernandina car and moves on that night, arriving at Fernandina between 9:30 A. M. and noon of the next day. Cars containing outbound interstate shipments from Fernandina are moved into Baldwin, and from that point to Jacksonville, where they lay over until the following day. In the proposed truck operations, shipments would leave Jacksonville at 6:30 A. M. and arrive at Fernandina at 8:00 A. M. In the outbound movement shipments received in Fernandina by 4:00 P. M. would arrive at Jacksonville at 5:30 P. M. or in time loading into the regular less-than-carload merchandise cars for movement from Jacksonville the same night, a saving in time of about a day over the present service.

From November 20, 1937, to June 15, 1938, applicants transported 854,194 pounds of freight by truck in intrastate commerce from Jacksonville to Yulee in 175 trips, and about 190,204 pounds of freight from Fernandina and Yulee to Jacksonville in the same number of trips, or an average of 4,864 pounds and 1,160 pounds per trip, respectively. In the same period applicants transported 2,213,485 pounds of less-than-carload interstate traffic by rail from Jacksonville to Fernandina in 293 cars, and 316,527 pounds of freight from Fernandina to Jacksonville in 72 cars, or an average of 7,761 and 4,369 pounds per car, respectively. The total of the combined intrastate and interstate movement for the considered period was 3,067,679 pounds from Jacksonville to Fernandina and Yulee, or an average of 17,529 pounds per trip per truck, and 506,731 pounds in the reverse direction, or an average of 2,895 pounds per truck per trip. The heavier movement to Fernandina than in the reverse direction is said to be accounted for by a movement of ma- [fol. 103] chinery and supplies used in construction of paper mills at that point.

The month of January, 1938, was employed as a test period for purposes of comparing the movement of less-than-carload traffic by all common carriers serving Fernandina, both directly and indirectly. Applicants transported 482,337 pounds in 43 cars to Fernandina and 40,204 pounds in 12 cars from that point in that month. In the same period, McJunkin Truck & Bus Lines, operating between Fernandina and Jacksonville, transported [illegible]211 pounds of freight. The St. John's River Line Company also delivered 5,019 pounds to the McJunkin Line, and the L. & L. Freight Lines interchanged 14,882 pounds of interstate traffic with the McJunkin Line. If the tonnage hauled by the two other carriers was not included in the report of the McJunkin Lines' tonnage, the latter carrier handled a total of 56,112 pounds of freight, as compared with 522,451 pounds by applicants in the same period. However, the data for the motor carriers was furnished subsequent to the hearing, and it is, therefore, not clear that the summary for the McJunkin Line did not include traffic received from the two other carriers.

Applicants anticipate effecting some economies through a reduction in the number of cars required for handling less-than-carload shipments between Jacksonville, Fernandina and Yulee. This saving is estimated at about $1,383 for the period of November 20, 1937, to June 14, 1938, during which period about 167 cars were handled between those points. In handling interstate shipments in the vehicle used in the existing intrastate operation there will be no substantial additional costs. The actual operating expense for the intrastate truck service during the period just referred to is given as $1,463.64, or an average of 16.82 cents per mile.

General Discussion and Findings

One of the questions raised by applicants in the considered operations, other than those between Richmond and Henderson, and between Hamlet and Columbia, puts in issue the jurisdiction of this Commission to require the filing of applications in respect to such operations. Applicants argue that under the last proviso of section 206 (a) of the act they are entitled to conduct operations between points wholly within the considered States by registering their intrastate authority with us. Some question has also been raised by protestants as to whether the certificates

[fol. 104] granted applicants in respect of their Florida intrastate operations by that State are of the character contemplated by the proviso of the act just referred to. We do not deem it necessary to consider that question. At the time of filing the application in the title proceeding and those in Sub. Nos. 1 to 7, applicants were engaged in interstate operations between Hamlet and Monroe, N. C.; between Jacksonville and Wildwood, Fla.; between Waldo and Morriston, Fla.; and between Brooksville and New Port Richey, Fla., all of which operations are covered by application No. MC-28984, filed with us on February 8, 1936. It, therefore, clearly appears that as of the date of filing all of the considered applications, applicants were not engaged in operation solely within any one State, and, therefore, the considered operations do not come within the latter proviso of section 206-(a) of the act.

The Railway's operating revenues for the fiscal year ending December 31, 1936, were $30,346,055, net railway operating income $2,920,583, and gross income, including revenue other than that derived from operation, $3,276,751. Applicants have conducted truck operations in both intrastate and interstate commerce over some 700 miles of routes, and are fit, willing, and able to conduct the operations proposed by these applications. However, before granting the authority sought we must determine whether it is required by the present or future public convenience and necessity.

The orders recommended by the joint boards in these proceedings, while ostensibly confining applicants to the type of auxiliary and supplementary service proposed, do not, generally speaking, have the effect of limiting applicants strictly to that type of service, and applicants during the hearings and upon the oral arguments indicated that they were unwilling to be so restricted, although they intimated a willingness to accept such a restriction if we deemed it necessary. Protestants have indicated that they principally fear the likelihood of applicants competing with them for traffic between many points which does not originate on, or is destined to terminate, on the line of the Railway. Protestants also have contended in these proceedings that they are willing to enter into arrangements with applicants to provide the type of coordinated service contemplated.

The joinder of the routes between Richmond and Columbia would permit applicants to furnish a through truck [fol. 105] service between those points through interchange

between their proposed routes unless we so restrict any authority granted herein so as to prevent it. Applicants indicate that the only time shipments might move over some combination of the routes involved wholly by motor vehicle would be in the event of a rail emergency, and they concede that the necessity for such movements would rarely arise. The existence of such hypothetical situation does not justify authority to applicants to engage in truck service which is strictly competitive with independent motor carriers, and our findings will prevent such a contingency.

Applicants contend that in the proposed operations they will be combining the best features of both rail and motor service and that the service will be unlike that of the independent motor carriers. They further contend that they cannot accomplish their intended purpose by entering into arrangements for interchange with existing motor carriers, for a number of reasons. They state that if they were compelled to turn over traffic originating on their lines to independent motor carriers they would, in many instances, be short-hauling themselves for the benefit of their competitors, and that, in some instances, this would involve the surrender of virtually all of their revenue from particular traffic.

Applicants also assert that interchange with independent motor carriers would entail additional accounting, involve difficulty in fixing responsibility for loss and damage claims and in making divisions of rates, which difficulties do not arise when the entire transportation is under the control of one agency. They further call attention to the problems that would arise in adjusting the schedules of independent motor carriers to the requirements of an efficient coordinated rail-truck service. Applicants argue that in the event of failure of the rail and independent motor service to make proper connections they would have to bear the onus of dissatisfaction with the service that would result. They further contend that interchange with independent motor carriers would involve additional checking of shipments and frequent additional handling which would prove to be considerably more expensive than transfers between rail cars and rail-owned trucks. In the event applicants' truck driver has a shipment consigned to a station at which the agent is absent, the driver unlocks the warehouse and places the shipment therein. Applicants are unwilling to accord

this privilege to the employes of the independent motor carriers.

[fol. 106] While the evidence indicates that in most instances there is adequate motor-carrier service over the considered routes it is also clear that applicants' proposed service will expedite deliveries of less-than-carload shipments which *now move* by rail. The proposed operations should result in improved service with respect to merchandise, as well as carload traffic, and the record indicates that applicants will be able to effect some economies through elimination of train stops and reduction of the number of cars in their trains. In *Illinois Central Railroad Company Common Carrier Application* —, M. C. C. — (decided March 27, 1939), we granted authority, similar to that sought by applicants herein, to the Illinois Central Railroad Company authorizing motor vehicle service between certain stations on the line of that carrier in Illinois. We there said:

> The inauguration of the coordinated operations here proposed will result in improved service being offered to the shipping public. * * * The plan proposed by applicant will result in a new type of service utilizing both forms of transportation to advantage, and differing from the service given by the railroad alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by section 202 (a) of the act, which declares it to be, among other things, the policy of Congress to "improve the relations between, and coordinate transportation by a regulation of, motor carriers and other carriers." Further, section 213 (a) (1) permits a railroad to acquire a motor carrier operation provided we find "that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

In *Kansas City S. Transport Co., Inc., Common Carrier Application*, 10 M. C. C. 221, we also said:

> We do not believe that the development of this new form of service will seriously endanger the operations of protestants but, in any event, the public ought not

to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If that principle had been followed, indeed, no motor carrier service could have been developed.

There seems little question as to the proposed rail-truck coordinated service being in the public interest nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent [fol. 107] motor carriers. However, the only need shown of record is for service which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service and the certificate granted herein will be limited accordingly. The limitations contained in the findings below are similar to those prescribed by us in the *Illinois Central* and *Kansas City Southern* cases, supra.

We find that the present and future public convenience and necessity require operation by applicants as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between the points and over the regular routes described in the appendix hereto, serving the intermediate and off-route points referred to, and subject to the following conditions:

(1) The service by motor vehicle to be performed by applicants shall be limited to service which is auxiliary to or supplemental of the service of the Seaboard Air Line Railway;

(2) Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway;

(3) Shipments transported by applicants by motor vehicle shall be limited to those which move under a through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

(4) Such further specific conditions as we in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway.

We further find that applicants are fit, willing, and able properly to perform the service proposed by the considered applications and to conform to the provisions of the act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted.

Upon compliance by applicants with sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued.

Commissioner Rogers dissents.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

Appendix

The following describes the scope of the applications considered in the report. In addition to the termini of the [fol. 108] routes described, the applications embrace all intermediate points which are stations on the lines of the Seaboard Air Line Railway, and the off-route points named, which are stations on the Railway.

No. MC-86687

Filed February 23, 1937. Between Gaston, S. C., and Garnett, S. C., as follows: Gaston to Swansea, S. C., over South Carolina Highway 3, Swansea to Olar, S. C., over South Carolina Highway 6. Olar to Junction of South Carolina Highways 64 and 33 over said Highway 64, and thence to Garnett over South Carolina Highway 33.

No. MC-86687 (Sub. No. 1)

Filed February 23, 1937. Between McBee, S. C., and Sumter, S. C., as follows: McBee to Hartsville, S. C., over South Carolina Highway 35. Hartsville to Timmonsville, S. C., over U. S. Highway 15 and South Carolina Highway 403. Timmonsville to Sumter over U. S. Highway 76. Return route from Sumter to Bishopville, S. C., over U. S. Highway 15. Bishopville to Darlington, S. C., over U. S. Highway 15 and South Carolina Highways 34 and 35. Darlington to McBee over South Carolina Highway 35.

No. MC-86687 (Sub. No. 2)

Filed February 23, 1937. Between Henderson, N. C., and N. C., as follows: Henderson to Franklinton, N. C., over U. S. Highway 1. Louisburg, N. C., and return to Franklinton over North Carolina Highway 56. Franklinton to Raleigh over U. S. Highway 1.

No. MC-86687 (Sub. No. 3)

Filed February 23, 1937. Between Hamlet, N. C., and Columbia, S. C., as follows: From Hamlet, N. C., to North Carolina-South Carolina State line over North Carolina Highway 77. From said State line to junction of South Carolina Highways 98 and 9 over said Highway 98, and thence over South Carolina Highway 9 to junction with U. S. Highway 1, and thence over latter Highway to Cheraw, S. C. Cheraw to Pageland, S. C., over South Carolina Highway 9. Pageland to McBee over South Carolina Highway 35. McBee to Columbia over U. S. Highway 1. Return route from Columbia, as follows: U. S. Highway 1 to junction with South Carolina Highway 9; thence over latter Highway to junction with South Carolina Highway 98; thence over latter Highway to North Carolina-South Carolina State line, and thence over North Carolina Highway 77 to Hamlet.

No. MC-86687 (Sub. No. 4)

Filed February 23, 1937. Between Hamlet and Raleigh, N. C., as follows: Hamlet to Marston, N. C., over North Carolina Highway 77. Marston to Sanford, N. C., over U. S. Highway 1. Sanford to Pittsboro, N. C., over U. S. Highways 1 and 501. Pittsboro to Apex, N. C., over U. S. Highway 1.

[fol. 109] No. MC-86687 (Sub. No. 5)

Filed February 23, 1937. Between Hamlet and Wilmington, N. C., as follows: Hamlet to Lumberton, N. C., over U. S. Highway 74. Lumberton to Bolton, N. C., over North Carolina Highway 211. Bolton to Wilmington over U. S. Highway 74.

No. MC-86687 (Sub. No. 6)

Filed February 23, 1937. Between Monroe and Rutherfordton, N. C., as follows: Monroe to Lincolnton, N. C., over U. S. Highway 74 to junction with North Carolina Highway 27, thence over latter Highway. Lincolnton to Caroleen, N. C., over North Carolina Highway 150 to junction with U. S. Highway 74; thence over latter Highway to junction with North Carolina Highway 120; thence over latter Highway to junction with U. S. Highway 221 and thence over latter Highway to Caroleen. Caroleen to Ellenboro, N. C., over a county road. Ellenboro to Rutherfordton over U. S. Highway 74.

No. MC-86687 (Sub. No. 7)

Filed February 23, 1937. Between Richmond, Va., and Henderson, N. C., as follows: Richmond to South Hill, Va., over U. S. Highway 1. South Hill to Lacrosse, Va., over U. S. Highway 58. Lacrosse to Bracey, Va., over Virginia Highway 138. Bracey to Henderson over Virginia Highway 615 to junction with Virginia Highway 637; thence over latter Highway to junction with U. S. Highway 1, and thence over latter Highway. Also serving the off-route points of Chester, Warfield, Rawlings, Alberta, Cochran and Grundy, Va., over Virginia Highways 10, 643, 629, 137, 34, and 644, respectively.

No. MC-86687 (Sub. No. 8)

Filed May 26, 1937. Between Greenwood, S. C., and Great Falls, S. C., as follows: Greenwood to Chester, S. C., over South Carolina Highway 7. Chester to Great Falls, S. C., over South Carolina Highway 97. Also the off-route point of Cross Hill, S. C., over South Carolina Highway 39 and the off-route points of Renno and Leeds, S. C., over county highways.

No. MC-86687 (Sub. No. 9)

Filed August 9, 1937. Between Jacksonville and Live Oak, Fla., over U. S. Highway 90.

No. MC-86687 (Sub. No. 10)

Filed August 9, 1937. Between Live Oak and River Junction, Fla., over U. S. Highway 90, except that the application indicates a digression beginning at the junction of Florida Highway 43 and U. S. Highway 90, thence to Tallahassee over Florida Highway 43, a county highway, and Florida Highway 19, via Lloyd Capitola, and Chaires, Fla. The off-route points of Aucilla, Fla., over Florida Highway 42, and Drifton, Fla., over U. S. Highway 19 are served.

[fol. 110] No. MC-86687 (Sub. No. 15)

Between Monroe and Waxhaw, N. C., over North Carolina Highway 75, and the off-route point of Mineral Springs, N. C., over a county highway.

No. MC-86687 (Sub. No. 18)

Between Jacksonville and Fernandina, Fla., as follows: Jacksonville to Yulee, Fla., over U. S. Highway 17. Yulee to Fernandina over Florida Highway 13.

EXHIBIT M

28 M. C. C. 5

No. MC-61438[1]

Kansas City Southern Transport Company, Incorporated, Common Carrier Application

Submitted June 19, 1940. Decided January 24, 1941

1. In No. MC-89811, public convenience and necessity found to require operation, subject to certain conditions, by

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[1]This report also embraces two applications by the Kansas City Southern Transport Company, Inc., for extensions of operations, each numbered MC-61438, prior report 10 M. C. C. 221; No. MC-86687, and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18; Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson,

applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, over specified routes between Elizabethtown and Madisonville, Ky., and between Nashville, Tenn., and Hopkinsville, Ky., serving certain intermediate and off-route points which are stations on its rail lines. Issuance of certificate, subject to conditions, approved on compliance by applicant with certain requirements, and application in all other respects denied.

2. Upon oral argument, conditions attached to certificates granted in prior reports, 10 M. C. C. 221, 17 M. C. C. 413, 19 M. C. C. 702, and 22 M. C. C. 213, authorizing operations in interstate or foreign commerce, by applicants as common carriers by motor vehicle of general commodities in coordinated motor-rail service between various points over various routes, modified. Issuance of certificates authorized on compliance with certain conditions, and order entered vacating and setting aside certain prior orders and denying the applications in part.

Appearances in reports other than No. MC-89811 as shown in prior reports, and, in addition, *H. Z. Maxwell, C. O. Heidley, C. F. Real, Harvey F. Krogman*, and *S. C. Lush* on oral argument.

William A. Northcutt and *W. L. Grubbs* for applicant in No. MC-89811.

J. R. Turney, G. R. Rives, James W. Wrape, B. W. LaTourette, H. W. Vincent, Charles E. Banks, R. W. Brunow, [fol. 111] *Richard Gleaves, James H. Denney, Reuben Crimm, Charles Roser, Morgan J. Parlin, Charles B. Skimerton, L. H. Miles*, and *W. S. Daugherty* for protestants in No. MC-89811.

William C. McMurry, L. A. Gossage, and *Walter C. Newkirk* for interveners in No. MC-89811.

Receivers) Motor Operation—Gaston Garnett, S. C., prior report 17 M. C. C. 413; No. MC-88370, LandA Motor Lines Contract Carrier Application, prior report 22 M. C. C. 213; No. MC-48602, subnumbers 2 to 5, inclusive, Chicago, Rock Island & Pacific Railway Company Extensions—Iowa, Missouri, Kansas, and Nebraska, prior report 19 M. C. C. 702; and No. MC-89811, Louisville & Nashville Railroad Company Common Carrier Application.

Report of the Commission on Oral Argument and Reconsideration

EASTMAN, *Chairman:*

Each of the applications herein considered, except No. MC-89811, has been the subject of a prior report by division 5, as indicated in footnote 1, and has been reopened for oral argument and reconsideration upon petitions of applicants.[2] No. MC-89811 has been the subject of a recommended report and order of a joint board to which applicant filed exceptions. Upon petition of the American Trucking Association, Inc., it too was reopened for oral argument along with the other cases herein considered. Our conclusions in this case differ from those recommended by the joint board.

Applicants in each case are railroads or companies subsidiary to or affiliated with railroads. In each application authority is sought to engage in motor-vehicle operations in the transportation of general commodities in line-haul operations between points on rail lines of applicants or of railroads associated therewith. In all of the cases, except No. MC-89811, which will be more fully discussed hereinafter, division 5 found that the proposed motor-vehicle operations were those of a common carrier by motor vehicle, and that public convenience and necessity required the proposed service to the extent it would be auxiliary to or supplemental of rail service, and authorized the issuance of certificates subject to certain conditions which were imposed for the purpose of limiting the authorized operations to those which would be in fact auxiliary to or supplemental of rail service.

Specifically the conditions imposed by division 5 in No. MC-61438 are as follows:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental

[2] The title case, No. MC-61438, is the "grandfather" clause application of the Kansas City Southern Transport Co., Inc., which was denied in the prior report and order of November 12, 1938. Though reopened with the related extension applications of the same number, it offers no present issue and need not be further considered. The order of denial, as far as it is concerned, is still effective.

of rail service of the Kansas City Southern Railway Company or the Arkansas Western Railway, hereinafter called the railways.

[fol. 112] 2. Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railways.

3. Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

4. All contractual arrangements between applicant and the railways shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

In prior reports in the other cases, each of the certificates granted was made subject to similar conditions. In some, involving railroad applicants, the wording of condition 3 was changed by omitting the words "it receives from or delivers to either one of the railways" and inserting in lieu thereof the word "move," and condition 4 was also omitted as not applicable. In No. MC-86687, the words "or interchange traffic at" were omitted in condition 2, apparently on the theory that motor carriers may not interchange traffic at points other than those which they are authorized to serve.

In the prior report in No. MC-61438, 10 M. C. C. 221, division 5 discussed at some length the question of what restrictions should be imposed, and stated that, if applicant should be of the opinion that the limitations imposed would prevent it and the associated rail carriers from providing an adequate coordinated rail-and-motor service or that public convenience and necessity require the institution of service wholly by motor vehicle to and from the smaller points which now are without such service, it might bring the matter to our attention by a petition that the proceeding be reopened for further hearing and consideration.

The purpose of the conditions imposed was to limit the motor-carrier service to that which is auxiliary to, or supplemental of, the rail service and to prevent applicants from engaging in motor-carrier operations unconnected with any rail service.

On oral argument applicants contend that condition 3 should be eliminated because it prevents them from providing an economical, efficient, and adequate coordinated rail-and-motor service and results in the continued use of both way-freight trains and trucks, lightly loaded, between various points, and because the performance of all-motor service between certain points is a necessary and integral part [fol. 113] of the plan of coordinated operations. Representatives of commercial organizations of St. Joseph, Mo., and Hutchinson and Topeka, Kans., support the position of applicant in No. MC-48602, subnumbers 2 to 5. The Railway Labor Executives' Association urges the retention of condition 3. The Brotherhood of Railroad Trainmen goes even further and takes the position that no authority to engage in such motor-vehicle operations should be granted railroads or their subsidiaries, because, in its opinion, the public need in the transportation of less-than-carload freight is one of service and rates which could be met by all-rail service, if the railroads would give the problem adequate attention. The representatives of independent motor carriers contend that the applications, for the most part, should be denied for lack of public need, since there is already available both rail and motor-carrier service which, if the railroads would cooperate with the existing motor carriers, could be linked together to provide an adequate and efficient coordinated service; but that, if we sustain the action of division 5 in granting the applications, the conditions imposed should all be retained.

Our action here is governed by the provisions of section 207 (a) of part II of the Interstate Commerce Act, which provides that a certificate shall be issued to any qualified applicant if it is found, among other things, that the proposed service is or will be required by the present or future public convenience and necessity. This, therefore, is the primary question to be determined.

Except for the representative of the Brotherhood of Railroad Trainmen, no one at the oral argument questioned the finding in the prior reports that public convenience and

necessity, in the circumstances disclosed of record, require a coordinated rail-motor service in the movement of less-than-carload traffic, and his expression of opinion to the contrary has no support in the evidence. We are persuaded that the finding of division 5 in this respect was justified, and also its further finding, upon the records in those cases, that the motor portion of such coordinated service could most efficiently and effectively be supplied either by the rail carriers themselves or by motor carriers under their control rather than by existing independent motor carriers. As stated, the representatives of the latter urge that, if the railroads would cooperate with them, the desired coordinated service could be adequately provided by the use of existing facilities and without the grant of any new operating authority. This contention was sufficiently discussed by division 5 in the prior reports. As pointed out [fol. 114] in the leading case, 10 M. C. C. 221, we are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle; it could only be accomplished through the medium of through routes and joint rates: we have no power to require their establishment, and accordingly any such plan of coordination must depend upon voluntary cooperation; and the protesting motor carriers had not developed any such plan nor indicated what general form it might take. It was found that coordinated service through the voluntary cooperation of all or some of the existing motor carriers would not be practicable, for reasons amply stated, and that the useful public purpose which the proposed operations of applicant would serve could not be achieved effectively through the use of existing facilities. It was further found, and properly we think, that the development of the coordinated service would not seriously endanger the operations of existing motor carriers, but that, in any event, the public ought not to be deprived of the benefit of an improved service merely because it might divert some traffic from other carriers, pointing out that had the principle been followed no motor-carrier service could have been developed.

The traffic under consideration, which is chiefly so-called package or merchandise freight in less-than-carload quantities, is, of course, traffic which the railroads are and have been under an obligation to transport and which they will continue to transport whether we grant or deny the appli-

cations. So far as such traffic can be moved in well-loaded cars on through trains which serve only the larger points, it can be handled efficiently by rail, and the railroads have no need to substitute truck service for such rail service. The way-freight train service which is used in serving the smaller stations is, however, uneconomical and inefficient, and trucks can be used in substitution therefor to much advantage both to the railroads and to the public served. Division 5 found in 10 M. C. C. 221, and we agree, that reduction in the cost and increase in the efficiency of transportation service inure to the benefit of the general public and are required by public convenience and necessity. *Texas* v. *United States*, 292 U. S. 522, and *New York Central Securities Corp.* v. *United States*, 287 U. S. 12.

The division at page 238 went on to say this:

However, while it has been shown that public convenience and necessity require the establishment of a service by applicant which will be coordinated with that of the railway, the record is devoid of proof that there is any need for the institution of service by applicant which is not re-
[fol. 115] quired in such coordinated operations. In other words, there are plenty of motor carriers in this territory and it has not been shown that there is any need whatever for another motor carrier to furnish service such as the existing carriers furnish and having no close relation to rail operations. It follows that the certificate to be granted to applicant should be limited accordingly.

Following out this line of thought, it stated the underlying reason for condition 3, at page 239, as follows:

Applicant's evidence, as well as that of the shippers who appeared, as to the need for improved service between the stations on the lines of the two rail carriers, relates almost entirely to the movement of shipments partly by rail and partly by motor vehicle. With the possible exception of some small stations, it is clear that the present facilities for the movement of freight wholly by motor vehicle between stations on the two rail carriers' lines are adequate. Consequently, we are of the opinion that applicant should be limited to the transportation of shipments which it receives from or delivers to either one of the two rail carriers under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

Applicants now point out that condition 3 prevents the full accomplishment of the purpose which the substituted truck service is intended to serve, because the terms of that condition make it necessary to continue to maintain way-freight train service for the handling of traffic between various stations. Under condition 3, truck service may be used between such stations in connection with a prior or subsequent movement by rail, but not otherwise, notwithstanding that the truck service could readily accommodate all the traffic. Manifestly, this seriously limits the benefits in economy and efficiency of service which the substitution of trucks is intended to produce.

As the above quotations indicate, the thought of division 5 in regard to this matter was that public convenience and necessity required a coordinated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor-carrier service under railroad control which is not coordinated with prior or subsequent rail service. Hence condition 3. Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing [fol. 116] service between the stations, but that between many of them the present means of railroad service, the way-freight train, is uneconomical and inefficient. This is the reason for coordinating truck service with the rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in increased economy and efficiency which the public interest demands cannot be secured.

It must be borne in mind, as above indicated, that in all of these cases the railroad has been and is transporting

the traffic in question between its stations and is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. In both its direct and its indirect effect such substitution is in the public interest. An illustration which will come readily to mind is the widespread substitution in recent years of busses for rail service by local transit com anies. One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest.

It does not follow, however, that public convenience and necessity require in these cases a grant of operating authority to provide motor-carrier service between all the stations. There are certain larger points on the lines of the respective railroads here involved between which through freight trains are operated. Such trains include package or merchandise cars which are set out at the principal points, commonly referred to as key or break-bulk points. These cars contain merchandise destined, not only to the key points, but to way stations located between such points as well. The distribution of the way-station freight is effected by means of local way-freight trains. As previously stated, applicants desire, at least so far as the package or merchandise traffic is concerned, to discontinue the latter service and substitute in lieu thereof truck service.

[fol. 117] Applicants admit that rail service by through trains is economical and efficient for these longer hauls and that the operation of through package or merchandise cars transporting less-than-carload freight between key points will be maintained. In the circumstances, there is no need of substituting truck service, and public convenience and necessity do not require the establishment between such points of truck service under railroad control. An appropriate condition will therefore be imposed prohibiting the transportation of shipments by motor vehicle between key points. It is noted that in some instances through train service is maintained between key points, whereas in others such service is maintained in only one direction, or the key points served in one direction may differ from those served in the opposite direction. Our findings will take account of

such circumstances. While the restriction will prohibit applicants from transporting shipments as a common carrier by motor vehicle between key points, it will not prevent such transportation between points intermediate to the key points which does not involve movement between key points, or between a key point and an intermediate point.

Some difficulties have been encountered, however, in determining which points are actually the key points in all instances in view of the limited record with respect thereto. We recognize also that these points may change from time to time. Consequently, applicants may file appropriate petitions requesting us to amend the order herein so as to reflect any changes in the location of such points. Our attention may also be directed to any key points which may have been omitted. In the event any present modification is required in the designation of the key points, it should be brought to our attention by appropriate petitions filed within 30 days after the service of this report. We should also be advised by appropriate petitions of any changes in key points which may occur in the future. Such petitions should set forth fully the facts relative to the necessity for any such change.

No. MC-89811.—We now come to the application of the Louisville and Nashville Railroad Company. As previously stated, exceptions were filed by this applicant to the recommended order of the joint board denying the application, and upon petition of the American Trucking Associations, Inc., the matter was reopened for oral argument before us along with the other applications herein considered.

This applicant, a corporation, with headquarters at [fol. 118] Louisville, Ky., by application filed November 15, 1938, as amended, seeks a certificate of public convenience and necessity authorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between Elizabethtown and Madisonville, Ky., and between Nashville, Tenn., and Hopkinsville, Ky., over the two routes shown in appendix A hereto, serving the termini and the intermediate and off-route points therein shown, all of which are stations on its rail lines. A number of motor carriers and motor-carrier associations oppose the application. The Railway Labor Executives' Association, the Birmingham, Ala., Traffic Association, and the Louisville Board of Trade intervened.

Applicant proposes to establish truck service between the stations specified as a substitute for less-than-carload rail service. Less-than-carload shipments destined to the points involved will be consolidated at such principal shipping points as St. Louis, Mo., East St. Louis, Ill., Evansville, Ind., Cincinnati, Ohio, and Louisville, Ky., and then be moved in carload lots to convenient key points on the proposed routes, such as Elizabethtown, Bowling Green, Hopkinsville, Guthrie, and Madisonville, Ky., at which points they will be transferred to motor trucks for delivery to rail stations at destinations. Conversely, freight is to be collected at applicant's various stations and transported by truck to the key points, where it will be consolidated and forwarded by rail.

If a certificate is granted, applicant will conduct its operations with leased equipment. Under date of January 26, 1939, it entered into an agreement with the Railway Express Agency, Incorporated, whereby the latter will furnish it with all the vehicles that may be required. As compensation for use thereof applicant will pay 14.35 cents per truck-mile operated over route 1, and 12.5 cents per truck-mile operated over route 2. The plan contemplates the use initially of two trucks on route 1 able to carry from 4 to 5 tons each and of one truck on route 2 able to carry from 3 to 4 tons. Truck service will be rendered daily except Sunday, on regular schedules in both directions, over both routes. All traffic will be loaded and unloaded at applicant's depots, and drivers will be furnished with keys to the depots which may not be open at the times specified for the pick-up and delivery of the freight.

Applicant's less-than-carload traffic to and from the points involved, except Nashville, declined from 161,985,336 [fol. 119] pounds in 1928 to 42,132,716 pounds in 1938, or 74 percent. For its entire system, applicant's less-than-carload traffic declined from 1,515,105 tons in 1928 to 686,654 tons in 1937, or 54.7 percent, and the revenue therefrom declined from $13,093,441 in 1928 to $6,302,895 in 1937, or 51.9 percent. Similar figures for carload traffic show that in 1937 the carload tonnage for the system was 72.9 percent of that in 1928, and the revenues therefrom were 70.7 percent. These and other data of record show that there has been substantial decline in applicant's less-than-carload traffic, and that such decline in respect of traffic to and from

the points here involved has been materially greater than for its system as a whole.

A large number of shippers testified in support of the application. Merchandising methods have undergone changes, and merchants are now operating on a basis which requires frequent replenishment of stocks. As a result both shippers and consignees are demanding that their shipments be expedited in every way possible. Applicant believes that this demand can be best served by transporting less-than-carload shipments by rail in through cars with comparatively heavy loads to convenient distributing or key points and establishing coordinated service at the distributing points for movement to final destination by truck. Similar service would be provided in the reverse direction. It estimates that the coordinated service will result in reductions in time of delivery of less-than-carload freight to the points herein involved of from 1 to 3 days.

The trucks would be used in lieu of rail service now provided through the use of way-freight trains. The operations of these trains would continue, but they would be confined to the handling of carload freight, and applicant estimates that there would be a saving in rail operating costs of $34,372 per annum, owing to reductions chiefly in expense of switching and of loading and unloading cars, but including savings in car maintenance and depreciation. This saving, however, is somewhat speculative; and whether it would actually amount to as much as the added cost of operating the trucks is problematical. It is clear that the main advantage of the new service to applicant would be in the improvement of service and in the prospect that it would result in substantial traffic gains.

The interstate transportation service which applicant seeks authority to perform by truck relates primarily to traffic which will receive either a prior or a subsequent [fol. 120] movement by rail. However, applicant also contemplates transporting shipments from origin to destination solely by truck in both interstate and intrastate commerce. Applications for authority to engage in intrastate operations in Tennessee and Kentucky have been filed with the appropriate State authorities.

Applicant has been serving the points under consideration as a common carrier by railroad for over 50 years,

and without question is fit, willing, and able properly to perform the proposed service.

The protesting motor carriers in this case, with the aid of the American Trucking Associations, Inc., presented much more elaborate and comprehensive evidence in opposition to the application than was presented in any of the prior cases hereinbefore discussed. As has been seen, this evidence was persuasive to the joint board which conducted the hearings, for in its recommended report and order the proposal was that the application be denied, a fact which must be given the weight to which it is entitled. Protestants undertake to show that the proposed operations are not required by the present or future "public convenience and necessity," in the light of the interpretation of those words which was given by division 5 in *Pan-American Bus Lines Operation*, 1 M. C. C. 191, where it was said, at page 203:

> The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

While they admit that the proposed operations will result in service better than applicant is affording and better in some instances than is afforded by competing motor carriers, protestants introduced evidence to show, by a cost study, that the less-than-carload service rendered by applicant on its system as an entirety is carried on at a large loss. This forms the basis for a contention that the proposed operations "will prove disserviceable to the public by imposing an additional burden upon applicant's other traffic." The cost study, as revised to give effect to criticisms made by applicant, showed a loss of over $1,100,000 per year out of traffic which produced total revenues of $6,300,000, without taking into account terminal, switching, and pick-up and delivery deductions. This loss was based on the full allocated cost of handling the traffic. That there [fol. 121] is such a loss is not conceded by applicant, which makes the usual criticisms of the assumptions upon which

such estimates of cost are necessarily based but presented no study of its own. Without making a finding of the exact amount, we are of the opinion that upon the basis of full allocated cost there can be little doubt that the less-than-carload service of applicant results in considerable loss.

The record contains no proof, however, that applicant would be better off financially, if it were able to discontinue this service or, in other words, that the service does not yield a substantial excess of revenue over and above the out-of-pocket expense of producing it, which may be taken as the expense which would be saved if it could be discontinued. That it could lawfully be discontinued without public authorization or approval may be doubted. Protestants endeavored to show that the loss would be increased, if truck service were substituted for rail service to the extent proposed, but this, we think, they have failed to show. While applicant's evidence is not conclusive that the amount which will be saved in rail service is equal to the cost of the new truck operations on the basis of existing traffic, the conclusion is justified that the new method of handling the traffic will, by reason of the improved service and consequent traffic gains without proportionate increase in cost, more than pay its way.

This conclusion does not take into account evidence offered by protestants to the effect that the Railway Express Agency cannot without loss furnish the proposed truck service at the stipulated prices of 14.35 and 12.5 cents per truck mile. This evidence was supplemented by reference to the uniform express contract between the agency and the railroads, under which the latter receive what is left out of the express revenues after all expenses of the agency have been paid, an arrangement which offers little inducement to the agency to be meticulous in the ascertainment of the cost of any particular or special service for the railroads. However, the evidence in regard to this matter is conflicting and, while there is room for doubt, it is not sufficient to justify a finding that the stipulated prices of the Agency are below cost.

For the reasons given hereinbefore in the discussion of the prior cases, we find that the proposed substitution, in part, of a new means of providing applicant's less-than-carload service will, to the extent hereinafter indicated, serve a useful public purpose, responsive to a public de-

mand or need, and from that point of view is required by the public convenience and necessity.

Protestants in this case, however, did what was not done [fol. 122] by the protesting motor carriers in the prior cases: they undertook to show that the useful public purpose which the proposed operations would serve could and would be served as well by existing carriers without adding new operations to the sum total of existing facilities. Manifestly unnecessary and wasteful duplications of service should be avoided in the public interest, and for this reason the evidence of protestants in this respect merits the most careful consideration. Three alternative plans were proposed.

Under the first of these plans, the improved service would be provided by the Railway Express Agency through the use of applicant's passenger trains. It is shown that the agency is now engaged in the business of handling in passenger-train service some less-than-carload freight at regular freight rates to and from applicant's freight stations which would be served by the proposed truck operations. It is contended that this service could be expanded to include all of the less-than-carload freight which would be handled by truck under applicant's plan, and that passenger trains are available which would provide an expedited service equal to that which the trucks could give. There is no showing, however, that the Agency would be willing to furnish such service or could do so without loss, or that the existing service of this kind which it furnishes by passenger trains at freight rates is profitable either to it or to the railroads. We therefore dismiss this plan from further consideration.

The other two plans contemplate provision of the desired service by the use of existing motor carriers. The principal such carrier is the Whitney Transfer Company, which operates between Louisville and Nashville, Bowling Green and Hopkinsville, and Nashville and Evansville, serving all intermediate and many off-route points. It could supply service between practically all points on both route 1 and route 2. Meeks Motor Freight operates between Louisville and Nashville and between Bowling Green and Hopkinsville, serving all intermediate points. It could supply service between practically all points on route 1. The Bowling Green Express operates between Louisville and

Nashville, serving all intermediate points. It could supply service between practically all points on the section of route 1 between Elizabethtown and Bowling Green. The Southeastern Motor Truck Lines operates between Nashville and Evansville, with closed doors between Nashville and the Tennessee-Kentucky State line. It could supply service between practically all points on route 2, except those located between Nashville and the State line.

[fol. 123] Under one plan the desired service would be supplied by these motor carriers through the establishment of through routes and joint rates with applicant and its connections. The motor carriers have offered to join in such routes and rates, and are willing also that the Commission shall fix the divisions, if the participating carriers are unable to agree upon them. Under the other plan, which protestants preferred, the motor carriers would publish proportional rates applicable on less-than-carload freight moving on applicant's billing. These would be truckload rates between the termini of the routes subject to a maximum and a minimum weight of 10,000 pounds, but would permit split deliveries in one direction and split pick-ups in the other at the intermediate stations. Under these rates applicant would, technically, be a shipper or forwarder over motor-carrier lines. So far as the actual shippers of the freight were concerned, applicant's own less-than-carload rates would have through application to or from the destination or origin served by the motor-carrier line.

Since these proportional rates were proposed, the Supreme Court in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, has sustained the decision of the Commission in *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, in which proportional rates which had been published by motor carriers and were closely analogous to those here proposed were found to be unlawful. This decision, in our opinion, precludes further consideration of the proportional-rate plan, leaving the through route and joint rate plan as the only one which need be discussed.

Applicant makes numerous objections to protestants' plan. It contends that if the contemplated rail-truck service is to function properly there must be unity of interest in, and common management of, the project; that applicant could not expect to obtain from competing motor carriers the attention and devotion to the service necessary to make

of that service what the public requires and should be accorded; that the shipping public desires, as the testimony taken indicates, service for which applicant will be wholly responsible; and that the plan would in effect eliminate applicant in the affected area as a competitor for the traffic in question. It seriously objects to opening its depots to joint use with those who are its intense competitors and to making available to those competitors full information in regard to the shippers which it serves in the affected area and their traffic. It alleges that the principal protestant, the Whitney Transfer Company, has made it a practice to defy the law of the State of Kentucky appli- [fol. 124] cable to the weight of trucks and their loads and as a result has incurred frequent arrests, and that other protestants have conducted unauthorized operations. It further points out that the protesting motor carriers have no authority to serve all *all* the points to be served under applicant's plan, and alleges that they have not indicated a willingness to handle all of the less-than-carload traffic which applicant is obliged to haul.

Some of these objections are of very minor importance. While it is true that there are seven points on applicant's rail lines in the affected area which none of the protesting motor carriers is authorized to serve, the record shows that two of them each have a population of about 100, and a third has a population of about 50. The other four apparently have populations of less than 50. An exhibit filed by applicant descriptive of the traffic under consideration shows no traffic moving to or from these stations for a period of 10 years. If need for their service by motor carrier were found to exist, there is no reason to believe that difficulty would be experienced in obtaining the necessary operating authority. With respect to the traffic to be handled, protestants restricted their offer to the commodities which are generally handled by common carriers of general commodities by motor vehicle. With the exception of articles of excessive value, such as bullion, and traffic which is dangerous to handle or contaminating to other lading, protestants say that they can and will handle all less-than-carload traffic which could be handled in Railway Express Agency trucks under applicant's own plan.

With respect to the alleged violations of law by the protesting motor carriers, suitable penalties are provided for the punishment of such violations. Under section 212(a),

also, willful failure to comply with any provision of part II, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of a certificate, permit, or license, if continued after an order of the Commission has been issued commanding obedience, constitutes a ground for revocation of a certificate, permit, or license. Violations of law by a motor carrier in the past may likewise be considered in determining its fitness to receive a grant of operating authority. We have no such proceedings before us here, however.

Nor are we impressed with the danger to applicant which would result if the motor carriers were given access to some of its depots or provided with more direct opportunity to become informed in regard to the shippers which [fol. 125] applicant serves and their traffic. The communities involved are none of them very large, and it may be doubted whether there is much, if any, of this information which applicant has been able to keep secret from its motor-carrier competitors.

There are objections, however, which have greater importance. Protestants realized that the through route and joint rate plan has certain disadvantages, and for that reason they preferred the proportional-rate plan. Applicant is now, and for many years has been, engaged in handling the less-than-carload traffic in question wholly with its own facilities. It seeks to continue this status, substituting the truck in part as the means of transportation but maintaining direct control and responsibility for the entire service. Under the joint-rate plan, applicant would divide control and responsibility with one or more motor carriers, and the latter would deal directly with the shippers at one end of the joint haul. Under such an arrangement applicant would, unless it continued to provide the present service by rail, retire in part from the less-than-carload service with its own facilities in which it has so long been engaged. Moreover, the motor carrier or carriers upon which it would depend in part for the performance of an efficient joint service would also be engaged, solely or jointly with motor-carrier connections, in a competitive all-motor service. Moreover, the joint service would entail additional billing, checking, and transfer expense.

The proportional-rate plan was intended to avoid these objections, at least in considerable degree. In practical

effect it would be equivalent to the employment of motor-carrier service under contract. Applicant would continue to deal directly with the shippers, for its own less-than-carload rates would continue to apply over the through movement. The motor carrier would have no dealings with the shipper, but would receive for its part of the work a payment from applicant based on a simple truckload rate. The protesting motor carriers offered to agree to furnish applicant, upon 3 hours' notice, with necessary equipment at Bowling Green, Guthrie, Hopkinsville, Nashville, Madisonville, and Elizabethtown, which are the points at which applicant proposes to transfer from rail to truck or vice versa, and also at Louisville and Evansville, if desired, at the time designated, and on the schedules fixed, by applicant. Shipments from and to agency stations would move under seals, and would be loaded and unloaded by applicant's employees; motor-carrier employees would load and unload only at nonagency stations. For reasons already [fol. 126] stated, however, the proportional-rate plan must be dismissed from consideration.

Protestants urge that even under the joint-rate plan, it would be in the self-interest of the motor carriers to make the joint service as efficient and attractive to the shippers as possible, and also that the cost to applicant would be less than under its own plan. The preponderant movement of the present traffic of the motor carriers is south-bound. They operate on the average to about 75 percent of capacity in that direction, whereas north-bound the average is only about 25 percent. Accordingly they have arranged their proposed schedules for the coordinated service with applicant so that their part of the haul would be largely north-bound. This, they say, would improve their load factor, a result greatly to be desired. However, a considerable part of the traffic would move south-bound.

Their claim that the cost would be less to applicant than under its own plan is based wholly upon calculations that they could perform the service with less truck-miles. They propose to secure for their service revenue of 20 cents per truck-mile, which is much higher than the charges of 14.35 cents over one route and 12.5 cents over the other which the Railway Express Agency proposes to make. An additional charge of 2.5 cents per 100 pounds would be made for any loading or unloading done by their employees. With equal truck-miles, therefore, the cost under protestants' plan

would be materially higher. Their claim that they could perform the service with a sufficient saving in truck-miles so that the total cost would be lower is based on assumptions, some of which were sharply challenged by applicant. Thus, it was assumed that the type of truck to be supplied by the Agency for route 1 could carry no more than 4 tons, whereas it was testified for applicant that it is capable of carrying as much as 5 tons. It was also shown by applicant that some of protestants' proposed schedules contemplate deliveries in early morning hours when no station employees of applicant would be available, thus entailing payments to the motor carriers for unloading at the rate of 2.5 cents per 100 pounds. It was further shown that the schedules would make it necessary for applicant to transfer freight at Bowling Green from one through railroad car to another at an early morning hour when applicant would have no employees available for the purpose. We are not satisfied on the evidence of record that such a saving in truck-miles as protestants estimate could actually be made. In this connection it should be borne in [fol. 127] mind that their calculations were based on traffic handled by applicant in the past. If the traffic should grow under the coordinated arrangement, as is probable, the traffic problem presented would change, and it is difficult to believe that savings in truck-miles could always be made to offset in whole or in large part the very large excess in unit price per truck-mile.

It is also to be borne in mind that protestants' proposed schedules under the proportional-rate plan were based, as we understand it, on the use of the facilities of all four of the motor carriers which operate in the affected area, under a sort of a pooling arrangement. While, as we have seen, there are no more than seven small stations which none of these carriers is authorized to serve, the Whitney Transfer Company is the only one which could serve the entire area with the exception of these stations, and the others lack authority to serve other intermediate points on their more limited routes. The problem presented by points which the motor carriers lack authority to serve, therefore, would be of increasing importance if it were necessary to utilize the services of the three other carriers as well as the Whitney Transfer Company. Under a joint-rate plan embracing all four carriers, with each of them operating independently, it would seem that much duplication

of service would result, but if to avoid such duplications applicant should confine the joint rates to the Whitney Transfer Company, it seems most unlikely that it could perform the required service with the same economy of truck-miles that was contemplated in the proposed schedules under the proportional-rate plan.

Having in mind that, for the reasons above indicated, only the joint-rate plan is available, that under that plan applicant would find it necessary to divide control over and responsibility for less-than-carload service in the affected area with motor carriers which would continue to afford a competing all-motor service, and that the unit costs of the motor service would be materially higher than under applicant's plan with no assurance of offsetting savings in truck-miles, we find that the useful public purpose which would be served by coordination of rail and truck service could not be served as well by existing motor carriers as under applicant's proposed plan.

Protestants finally showed that the four motor carriers serving the affected area suffered operating deficits prior to 1938, and in that year enjoyed a combined net income of $32,433 out of total operating revenues of $962,135. From [fol. 128] this they argue that if applicant should divert as little as 3 percent of their present traffic, it would endanger the "operations of existing carriers contrary to the public interest." The traffic which applicant proposes to transport by truck rather than by rail now amounts to about 50 tons per day, and applicant proposes to use only three trucks of small capacity to haul it. This traffic could double in size without assuming large proportions. Following the conclusions reached in the discussion of the prior reports, we shall not authorize applicant to haul by truck between its key points, which are, of course, the larger and more populous communities in the affected area. Any diversion of traffic, therefore, will be only to or from the smaller towns or hamlets which are now served by way-freight trains. Whether such diversion, if any there proves to be, will be harmful to the motor carriers may be doubted, but we are of the opinion that the public is entitled to the improvement in service which applicant proposes, regardless of the fact that it may have some slight adverse effect on competing carriers. We find, therefore, that the proposed new operation will not endanger or impair the opera-

tions of existing carriers contrary to the public interest.

As has been indicated, applicant intends to conduct the considered operations in vehicles furnished by the Railway Express Agency. If such vehicles are used, it will be necessary that they be operated under the direction and control of applicant and under its responsibility to the general public as well as shippers, and they may not be operated under the direction, control, and responsibility of the Railway Express Agency. See *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, and *Railway Exp. Agency, Inc., Determination of Status*, 21 M. C. C. 161.

Ultimate findings.—In No. MC-89811, we find that the present and future public convenience and necessity require operation, in interstate or foreign commerce, by applicant as a common carrier by motor vehicle, of general commodities, over the regular routes described in appendix A hereto, serving the termini, all intermediate points, and the off-route points indicated in said appendix, subject to the following conditions:

1. The service by motor vehicle to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, its rail service.

2. Applicant shall not serve any point not a station on its rail line.

3. No shipments shall be transported by applicant as a [fol. 129] common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Elizabethtown, Bowling Green, Hopkinsville, Guthrie, and Madisonville, Ky., and Nashville, Tenn.

4. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operations by motor vehicle to service which is auxiliary to, or supplemental of, its rail service.

In the same case, we further find that applicant is fit, willing, and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted. Upon compliance by applicant with the requirements of sections 215 and 217

of the act, and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying this application, except to the extent that operations are authorized by the certificate herein granted.

In the two extension applications, each numbered MC-61438, prior report 10 M. C. C. 221; in No. MC-86687 and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18, prior report 17 M. C. C. 413; in No. MC-88370, prior report 22 M. C. C. 213; and in No. MC-48602, subnumbers 2 to 5, inclusive, prior report 19 M. C. C. 702, we affirm the findings of division 5, except we find that condition 2 (other than in the prior report 17 M. C. C. 413) and condition 3 should be modified to read as shown in appendix B hereto.

No order has heretofore been entered in No. MC-86687 and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18, denying such applications to the extent not granted. An order will be entered vacating and setting aside the order of October 28, 1939, in No. MC-48602, subnumbers 2 to 5, inclusive, the order of November 12, 1938, in the two extension applications numbered MC-61438, and the order of March 16, 1940, in No. MC-88370, and denying all of the applications herein considered except to the extent that certificates are granted in the prior reports as herein modified.

Certificates, subject to such further specific conditions as we may find it necessary to impose in order to restrict the operation therein authorized to those which are in fact auxiliary to, or supplemental of, rail service, have already been issued in the two extension applications numbered MC-61438 and in No. MC-86687, and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18. Applicants in these [fol. 130] cases will be expected, as of the effective date of the order, herein to surrender such certificates, whereupon amended certificates conforming with the conclusions herein will be issued.

MAHAFFIE, Commissioner, concurring in part:

In general I concur. I do not agree, however, that the imposition of condition 3 is warranted. Having found that the public convenience and necessity requires these truck operations, we should not impose conditions, in the nature of petty restrictions, which make them somewhat more

expensive to the carriers and somewhat less convenient to the public.

LEE, Commissioner, dissenting in part:

In the prior report in the title case, 10 M. C. C. 221, division 5 found that there are plenty of authorized motor carriers in operation throughout the territory in which the Kansas City Southern Transport Company proposes to operate; that, with the possible exception of some small stations, the present facilities for the movement of freight wholly by motor vehicle between the points which it proposes to serve are adequate; that the record fails to establish that there is any need whatever for it to provide a service such as the existing motor carriers are furnishing; and that public convenience and necessity require only the establishment by it of a motor-carrier service which will be auxiliary to, or supplemental of, rail service of its parent railroad company and which will not duplicate motor-carrier service now adequately provided by existing authorized motor carriers. Similar findings were made in the other reopened cases embraced in the instant report, and the record in No. MC-89811 will not support findings more favorable to that applicant.

The conditions imposed in the prior reports in the title case and the other reopened cases, and discussed in the instant report, were designed to restrict the authority granted to the operations which were found to be required by the present and future public convenience and necessity. For this purpose condition 3 was and is vital. On the records in these cases we could have, as urged by the existing independent motor carriers, granted less authority than this condition provides, but I insist that the evidence will not justify more.

The instant report, however, without disturbing the findings of fact in the prior reports in the reopened cases with [fol. 131] respect to the adequacy of existing motor-carrier service and without making materially different findings in No. MC-89811 with respect to such service, apparently recognizing that the records will not support any different findings, arrives at the conclusion that between all but "certain larger points," referred to as key points (and they, it is indicated, may be rather easily changed

and shifted) on the lines of the interested railroads public convenience and necessity require the "substitution" for present rail service of trucks operated by these railroads or their subsidiaries. To give effect to this conclusion, condition 3 is eliminated and a new condition is prescribed which merely prohibits the movement by motor vehicle by any of these railroads or their subsidiaries of shipments from one designated key point to another designated key point on their respective routes. The result is that they are granted authority to engage in motor-carrier operations and to furnish motor-carrier service which are not coordinated with or in any wise tied into rail operations or rail service but which, on the contrary, will duplicate the operations and the service provided by existing motor carriers and found to be adequate to fill the public need. In making this statement I have not overlooked the fact that the instant report retains condition 1 without change in text. It is clear, however, from the views expressed therein that the meaning intended to be accorded to that condition nullifies its restrictive effect to such an extent that the result stated above correctly describes the authority granted. As indicated, with this conclusion and the resulting elimination of condition 3 I cannot agree.

The act does not authorize us to grant a certificate or permit, authorizing motor-carrier operations by a railroad or its subsidiary, on any less proof of public need therefor than is required of other applicants for such operating authority. It may be, as stated in the report, that "one competitive carrier [a motor carrier] has no vested right in the continuation by another [a railroad] of an inefficient method of operation." Neither does a railroad or its subsidiary have a "vested right" to inaugurate new motor-carrier operations in competition with existing authorized motor carriers without establishing public convenience and necessity therefor. I favor issuing certificates to all of the applicants subject to the conditions prescribed in the prior report in the title case.

I am authorized to state that Commissioner Rogers concurs in this expression.

[fol. 132] Commissioner Alldredge, having been necessarily absent, did not participate in the disposition of these proceedings.

Appendix A

Routes granted

Route 1, between Elizabethtown and Madisonville, Ky.: U. S. Highway 31W between Elizabethtown and Bowling Green, Ky.; U. S. Highway 68 between Bowling Green and Hopkinsville, Ky.; and U. S. Highway 41 between Hopkinsville and Madisonville, Ky.; serving the intermediate points of Auburn, Bonnieville, Bowling Green, Cave City, Crofton, Dividing Ridge, Earlington, Elkton, Empire, Hopkinsville, Horse Cave, Kelly, Mannington, Morton, Munfordville, Nortonville, Park City, Rowletts, Russellville, and Upton, Ky., and the off-route points of Bristow, Gaithers, Glendale, Homeland, Nolin, Oakland, Rocky Hill, Smith's Grove, Sonora, Sunnyside, and Watrie, Ky.

Route 2, between Nashville, Tenn., and Hopkinsville, Ky.: U. S. Highway 41E; serving the intermediate points of Adams, Tenn., Casky, Ky., Cedar Hill, Goodlettsville, and Greenbrier, Tenn., Guthrie and Pembroke, Ky., Sadlers, Tenn., and Trenton, Ky., and the off-route points of Bakers, Kinney, Ridgetop, and Springfield, Tenn.

Appendix B

Conditions 2 and 3, as shown in the prior reports, will be modified to read as shown under the respective docket numbers below:

No. MC-61438 (two extension applications), prior report 10 M. C. C. 221:

2. Applicant shall not service any point not a station on a rail line of the railways.

3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Kansas City, Hume, and Joplin, Mo., Pittsburg, Kans., Shreveport and Lake Charles, La., Beaumont, Tex., Texarkana, Ark.-Tex., and Fort Smith, Ark. Nor shall they be transported from Kansas City, Mo., to Neosho, Mo.

No. MC-86687 and subnumbers 1 to 10, inclusive, and subnumbers 15 and 18, prior report 17 M. C. C. 413:

2. [No change required.]

3. No shipments shall be transported by applicants as a common carrier by motor vehicle from Gaston, S. C., to Swansea, North, Denmark, Fairfax, and Garnett, S. C., nor from Garnett to Estill, Fairfax, Denmark, and Gaston, S. C., nor between any of the following points, or through or to or from more than one of said points: Raleigh, Henderson, Hamlet, Aberdeen, Sanford, Apex, Southern Pines, Laurinburg, Maxton, Pembroke, Lumberton, Bladenboro, Wilmington, Monroe, Charlotte, Lincolnton, Shelby, and Ellenboro, N. C., Richmond and Petersburg, Va., Columbia, Sheraw, McBee, Greenwood, and Clinton, S. C., and River Junction, Quincy, Tallahassee, and Monticello, Fla.

No. MC-88370, prior report 22 M. C. C. 213:

2. Landa shall not serve any point not a station on the rail line of the Railway.

3. No shipments shall be transported by Landa as a [fol. 133] common carrier by motor vehicle from Shreveport, La., to Pittsburg, Winnsboro, Greenville, or Dallas, Tex.

No. MC-48602 subnumbers 2 to 5, inclusive, prior report 19 M. C. C. 702:

2. Applicant shall not serve any point not a station on its rail line.

3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: St. Joseph, Mo., and Topeka, Herington, McPherson, and Hutchinson, Kans.

EXHIBIT N

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 25th day of July, A. D. 1941.

No. MC-86687 and Subs. 1 to 10, 15, 18, 19

SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers).

Upon consideration of the records in the above-entitled matters, of applicants' petition for modification of order herein; and good cause appearing:

It is ordered, That the said matters be, and they are hereby, reopened for further hearing at a time and place to be hereafter fixed, solely to determine whether Condition 3 as set forth in the prior report, 28 MCC-5, should be modified and, if so, the extent of such modification.

By the Commission.

W. P. Bartel, Secretary. (Seal).

EXHIBIT O

Interstate Commerce Commission, Washington, D. C.

October 3, 1941.

No. MC-86687, Subs. 1 to 10, 15, 18, 19

SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers).

The above-entitled matters are hereby assigned for further hearing, solely to determine whether Condition 3 as set forth in the prior report, 28 MCC-5, should be modified and, if so, the extent of such modification, on the 12th day of November, A. D. 1941, at 9 o'clock A. M. (standard time), at the Sir Walter Hotel, Raleigh, N. C., before Examiner W. W. McCaslin.

W. P. Bartel, Secretary. (Seal.)

[fol. 134] EXHIBIT P

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket MC-86687 and Sub. Nos. 1-10, 15, 18, and 19

SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), Motor Operation and Extensions.

PETITION

Of the Antitrust Division, United States Department of Justice, to reopen the above-entitled proceeding for further hearing and to receive evidence essential to a determination of the effect upon the public interest of the granting of the application.

Comes now the Antitrust Division, United States Department of Justice, intervener in the above-entitle proceeding, and respectfully petitions the Commission to reopen said proceedings for further hearing and to receive evidence essential to a determination of the effect upon the public interest of the granting of the application in said proceeding, and in support of said petition respectfully says:

I

The original report and order of the Commission in the above-entitled proceeding was based upon separate hearings conducted by joint boards on each sub-numbered application, at which hearings all evidence was rejected except as it applied to the particular segment of route involved in each sub-numbered application and as to each sub-numbered application inadequate and inconclusive evidence was presented on the public issue of competition. The said report and order was issued July 11, 1939, 17 MCC-413, and included as a restriction upon the authority granted under each sub-numbered application, a condition which limited the railroad's motor-truck operations to those shipments where a prior or subsequent rail haul was involved. Without hearing or opportunity for any party to be heard, the Commission subsequently, in a report and order issued January 24, 1941, 28 MCC-5, substituted for said restriction requiring a prior or subsequent rail haul

a new restriction which provided for key point stations selected for each segment of route over which applicant was given authority to operate. Subsequently, and on October 3, 1941, the Commission consolidated and noticed 14 of the [fol. 135] sub-numbered applications for hearing at Raleigh, N. C., beginning November 12, 1941, for the purpose of determining the extent to which, if any, the said key point restriction should be modified.*

II

At the hearing held pursuant to said notice at Raleigh, N. C., November 12 and 13, 1941, the Examiner erroneously excluded evidence relating to competition between the railroad's motor-carrier operations and other common carriers by motor vehicle and the effect of granting the authority sought in this supplemental proceeding upon such competing motor carriers, facts essential to a determination by the Commission of the public issue of the extent, if any, to which the modification of such key point restrictions would unduly restrain competition in the motor-carrier field. Further, the Examiner erred in refusing to direct the railroad-applicant, pursuant to motion of your petitioner, to submit a statement of tonnages transported by its motor-truck facilities during the year 1940, and for those segments of route where the railroad-applicant is authorized to operate but does not operate, and to the extent applicant now seeks to remove restrictions, to give estimates of tonnages for such proposed new motor-carrier operations. Included in said motion was the request that such tonnage figures be divided to show interstate and intrastate tonnages and separated as to carload and less-than-carload freight. The Examiner further erred in refusing to require the railroad-applicant to produce for this record figures showing the extent, if any, to which the railroad company subsidizes motor-truck operations through utilization of its railroad stations for truck terminals, solicitation of freight, joint use of personnel, or otherwise. These facts are essential to a determination

* It should be noted that the report and order of January 244, 1941, does not include Sub. No. 19 of this docket though noticed as so included in this Consolidated hearing.

of the effect upon the public interest of the railroad's motor-carrier operations as they are proposed to be conducted under its application in the supplemental proceeding.

III

The denial to interested parties and to the public of an opportunity to be heard on the real issues here involved arises out of the erroneous procedure adopted and rulings made, which may be summarized as follows:

[fol. 136] 1. The splitting up of the sub-numbered applications in this proceeding for segments of routes paralleling the railroad, which are in fact physically connected, for hearing by various joint boards instead of by an examiner.

2. Limitation and restriction in the hearings before said joint boards in such manner that the admission of evidence relating to the effect of the motor-truck operations by the railroad company for each segment and in their entirety upon the competive independent motor-carrier industry, and the extent to which such railroad truck operations would restrain competition, was denied.

3. The absence of public hearings before the Commission in this proceeding upon the substitution of the key point restriction as required by its order of January 24, 1941, for the restriction requiring prior or subsequent rail haul, as provided in its order dated July 11, 1939, which materially changed railroad-applicant's motor-carrier operating rights.

4. The erroneous interpretation by the Examiner of the scope of the consolidated hearing held November 12 and 13, 1941, which again so narrowed the issues as to exclude the presentation of material evidence which interested parties had been denied the opportunity to present in the prior piecemeal hearings before the joint boards.

Clearly the hearings held before the joint boards on the individual sub-numbered applications does not afford a basis upon which the Commission can make a finding as to operations proposed to be conducted under the application noticed for hearing November 12, 1941. Having secured limited authority to operate over numerous routes, which in fact constitute connected segments of a longer route

paralleling the railroad, applicant now seeks in this consolidated proceeding to remove virtually all restrictions thereon and conduct in some instances motor-truck operations competitive with independent motor carriers. This, it is repeated, is the first time that these sub-numbered applications involving numerous segments of routes have been consolidated for the purpose of hearing and, therefore, it is the first opportunity that anyone has had to present testimony not only on the public effect of substituting the key point restriction for the prior and subsequent rail-haul restriction, and the effect of such substitution upon competition, but testimony upon the broad issue of public convenience and necessity for the operations [fol. 137] proposed to be conducted under the application in the consolidated hearing. The exclusion of such testimony leaves the record barren of facts essential to a determination of the extent to which such unrestricted railroad motor-carrier operations will restrain competition and denies to the Commission itself facts essential to the required statutory finding in this proceeding.

IV

There are pending before the Commission numerous applications by railroad companies seeking authority, directly or through subsidiary companies, to conduct common carrier motor-vehicle operations, all of which involve the public question of the extent to which such applicants shall under existing law be permitted to enter the motor-carrier field. Representations have been made to the Division that if railroads through ownership and direct operation of motor-truck lines are permitted to enter the motor-carrier field without adequate restrictions and without being required to comply with the provisions of Part II, Interstate Commerce Act, independent motor carriers will have little chance to survive because the larger resources of the railroads, including railroad station facilities, joint employes, soliciting forces, and other means of subsidy not available to independent motor carriers would soon strangle such independent motor carriers. The resultant monopoly would be achieved, it is claimed, if railroad companies are permitted to engage in over-the-road motor-carrier operations in competition with independent common carriers of property by motor vehicle. As this issue

is involved in the above proceeding, it is evident that the "public interest" therein transcends in importance this case, as important as it is. To grant the application herein without a record which contains facts essential to a determination of this important issue will prevent the Commission from making the ultimate statutory finding. Reopening this proceeding for the purpose of receiving all evidence on this important public issue will enable the Commission to arrive at a determination that will preserve the independent motor-carrier industry, thereby giving effect to the will of Congress. Further, a determination so made will then find a rational basis in the evidence upon which its order can be successfully defended in the courts.

Wherefore, the Antitrust Division of the Department of Justice prays that the Commission reopen said proceedings for the purpose of taking testimony as herein above set forth, to the end that the public and all those [fol. 138] interested therein may have an opportunity to be heard and that findings may be made on such testimony in accordance with the clear intent of Congress, and that the Commission issue further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted, Arne C. Wiprud, Frank Coleman, Special Assistants to the Attorney General. David G. Macdonald, Special Attorney.

By direction of Thurman Arnold, Assistant Attorney General.

Dated at Washington, D. C., December 5, 1941.

Certificate of Service

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 5th day of December, 1941.

A. C. Wiprud.

Exhibit Q

Before the Interstate Commerce Commission

Docket No. MC186687 and Sub. Nos. 1 to 20

Application of Seaboard Air Line Railway for Motor Carrier Certificate of Convenience and Necessity

Petition for

(1) Reopening and Rehearing
(2) Admission and Production of Evidence

Filed by The American Trucking Associations, Inc.
J. Ninian Beall, General Counsel.

December 5, 1941.

[fol. 139] Before the Interstate Commerce Commission

Docket No. MC-86687 and Sub. Nos. 1 to 20

Application of Seaboard Air Line Railway for Motor Carrier certificate of Convenience and Necessity

Petition for

(1) Reopening and Rehearing
(2) Admission and production of Evidence

Comes now the American Trucking Associations, Inc., of Washington, D. C., party of record in prior proceedings and appearing on behalf of its members who represent a class too numerous to mention and who are engaged in interstate commerce over the routes and in the territory covered by the captioned applications and who are and will be affected by said applications, and respectfully petitions and moves the Commission:

(a) To reopen, consolidate and rehear all of the captioned applications.

(b) To direct the taking of evidence for the purpose of developing and determining whether the proposed and existing operations by applicant, considered together, and in connection with its transportation policy and the transportation policy of railroads, express companies, water car-

riers, and railroad associations with which it is associated, will unduly restrain competition; impair sound economic conditions in the independent trucking industry; result in unfair and destructive competitive practices; discriminate against shippers; or otherwise be inconsistent with the provisions of, or the transportation policy declared in, the Interstate Commerce Act, and with the Antitrust Laws.

(c) To direct the taking of evidence for the purpose of developing and determining what provision, restrictions, [fol. 140] limitations or conditions or combinations thereof could, or should, be incorporated in the proposed and existing certificates for the purpose of preventing any or all of the results or effects set forth in the preceding paragraph (1).

(d) To direct the taking of evidence for the purpose of determining whether the transportation policy of applicant and of applicant in connection with other rail, express and water carriers, prevents the establishing of coordinated rail-truck, water-truck, and rail-water-truck service, joint rates, proportional rates, through routes, shipper routing of traffic, handling C. O. D. shipments, tracing and adjusting loss and damage claims, with independent motor carriers, and thereby deprives the public of the opportunity to freely employ any or all transportation agencies without discrimination or restraint.

(e) To direct the taking of evidence for the purpose of determining the ownership and operating relationships, agreements or understandings of applicant in connection with any rail, express and water lines, and to determine whether such agreements or policies create or would be likely to create a monopoly of transportation or of particular traffic, and whether such policies or practices do or are likely to deprive the public of the opportunity to freely employ any or all transportation facilities or combinations of transportation facilities without discrimination or restraint.

(f) To direct the Seaboard Air Line Railway to furnish such statistical information for the record as may be necessary to enable the Commission to determine the extent, quantity, kind and character of traffic which Seaboard Air Line Railway handles subject to restrictions against participation by independent motor carriers, and the quantity,

kind and character of traffic which Seaboard Air Line proposes to handle by truck and upon which it relies for support of its application for a certificate of convenience and necessity.

(g) To hold a pre-trial conference for the purpose of determining what data the Seaboard Air Line Railway should be required to furnish at or prior to the date set for public hearings on the reopened proceedings.

Argument in Support of Petition

Petitioner shows the Commission that the hearings heretofore held in connection with the captioned application [fol. 141] were inadequate and that essential evidence was excluded, and that it is necessary to reopen these cases for the purpose of taking additional evidence in order that the Commission may have adequate information as a factual foundation for the necessary statutory findings and for the proper determination of the issues.

Taking of Testimony and Production of Evidence

In all of the prior proceedings involving these applications, the essential evidence bearing on the issues set forth in paragraph (a) to (f) was excluded over objections of protestants by the joint boards or examiners assigned to hear the applications.

The practice and custom of the Commission in receiving certificate applications from railroads on a piece-route, particular-point or highway basis, bearing separate sub-numbers, and the assignment of such separate subs to joint boards, and the exclusion of evidence by joint boards and the failure and refusal of joint boards to investigate and consider the matters required by statute, has prevented, and will continue to prevent, the Commission from obtaining and considering an adequate record from which it can make the required statutory findings.

Regardless of the fiction or subterfuge of separate sub applications, the real operations involve regional or national issues. The Commission, by statute, is charged to consider the substance rather than the form of procedure and should direct that hearings be held and conducted in a manner conducive to the receipt of proper and necessary evidence regardless of whether the hearing be by a joint board or by the Commission.

In support of the proposition that the previous hearings have not fulfilled the statutory requirements, petitioner respectfully refers the Commission to the hearings before joint boards, and the orders of the Commission in connection with these applications.

The joint boards excluded the essential evidence and rules that they were not interested in the aggregate effect of such sub applications on the independent motor carriers (Sub. 7, R. 69-70).

The joint boards were not interested in what the railroad policy might be or how it might affect the independent motor carriers (Sub. 7, R. 101).

The Joint boards didn't know that other applications were pending (Sub. 3, R. 113).

[fol. 142] The joint boards refused to hear evidence involving the effect of the several railroad applications under either the Transportation Act or the Antitrust Laws (Sub. 3, R. 113; Sub. 7, R. 5, 71-74, 99-103, 124, 125).

The joint boards failed to consider what the effect of the use of rail rates, the lack of accounting requirements, and failure to comply with the provisions of Part II of the Interstate Commerce Act, would be on the independent motor carrier industry.

Protestants made timely exceptions to these rulings at the hearings, and, in addition, protestants filed timely motions with the Commission, praying for a procedure which would enable them to present their case and enable the Commission to secure an adequate record.

On the record as made before the joint boards with the evidence excluded, and without brief or argument on the matters covered by the exceptions and motions, the Commission, by final order, decided these cases and granted the applications.

In its original order, 17 M. C. C. 413, the Commission prescribed a "prior or subsequent movement by rail" restriction. Later the Commission, without hearing evidence, removed that restriction and substituted, without evidence, the so-called key point restrictions, 28 M. C. C. 5.

Subsequently, those applications were re-opened upon petition of the railroad in connection with modification of the key points and said matters were set for hearing on November 12, 1941, before an examiner. The examiner had before him for hearing a consolidated series of sub applica-

tions (MC-86687, Subs. 1-10, 15, 18, 19). Just why the subs were heard by separate joint boards originally and were consolidated and heard by an examiner on further hearing does not appear. This would indicate that the original hearings could have been before an examiner.

Protestants again sought to introduce evidence to show the monopolistic and competitive effect of removing the key point restrictions and consolidating the sub applications. The examiner ruled that no evidence would be heard and no cross-examination touching the subjects would be permitted, and protestants were prevented from developing an adequate record.

It would pointed out to the examiner that the evidence had not been received at the previous separate joint board hearings but the examiner ruled that the Commission had specifically restricted the further hearing and was now only [fol. 143] concerned with the railroad's petition for removal or modification of the key points and he would not hear evidence regarding the effect such removal might have on protestants (Hearing Nov. 12-13, 1941, R. 81-87).

Protestants took timely exceptions and made offers of proof.

Applicant refused to disclose the extent of its state operating rights (R. 89, 90).

Applicant failed and refused to operate the certificates granted by the Commission and to demonstrate by actual operations the effect of the key point restrictions (R. 123).

Applicant admitted that the petition for removal of key point restrictions was based on railroad convenience (R. 123).

Applicant did not and does not propose separate accounting for the truck operations (Sub. 1, R. 32, 41, 42; Sub. 3, R. 93; Sub. 7, R. 49, 50, 80, 110, 119; Hearing of Nov. 12, 1941, R. 106, 114); although applicant admitted that separate accounting could be made if required by the Commission (Sub. 7, R. 81).

At the rehearing, applicant proposed to establish both coordinated (part truck—part rail) and substituted service (all truck) as defined by applicant (Sub. 7, R. 120; Hearing of Nov. 12, 1941, R. 110, 111) and to operate trucks from 75 to 100 miles and more and to consolidate some of the sub applications, without restrictions and without complying with provisions of the law applicable to independent motor carriers (Hearing No. 12, 1941, R. 113, 114).

The examiner refused to permit cross-examination to develop whether there would be any way of testing the adequacy of charges for truck transportation by railroad at railroad rates, as compared with charges which independent motor carriers are required to make (Hearing Nov. 12, 1941, R. 114).

The examiner refused to permit cross-examination for the purpose of determining how the operating authority could be policed by the Commission without accounting requirements (Hearing Nov. 12, 1941, R. 115).

The examiner refused to permit cross-examination with reference to possible alternative conditions which might be incorporated in the certificate (Hearing Nov. 12, 1941, R-115, 116).

The examiner refused to hear testimony covering possible coordination with independent motor carriers (Hearing Nov. 12, 1941, R-116, 117).

In short, the hearings as conducted by the joint boards [fol. 144] and by the examiner have failed to meet the statutory requirements as to either transportation, monopoly or due process.

Protestants were denied proper participation in the proceedings.

The convenience of railroads appears to have been substituted for the public interest. The statutory admonition with respect to unfair competitive practices, promotion of sound economic conditions in the motor carrier industry, and restraint of competition have not been and cannot be given appropriate consideration on either the present record or under the procedure which has been followed.

Production of Statistics

It is necessary to require applicant to produce statistics with respect to the proposed operations and the traffic which may be handled in order to show the competitive and monopolistic effect of its proposals and to enable protestants to meet these issues.

At the hearing in the previously referred to Seaboard Air Line application, applicant failed and refused to furnish information with respect to tonnage or character of traffic involved and the examiner refused to require the production of any such evidence (Hearing Nov. 12, 1941, R-96-104, 112, 113, 117-119, 120, 121). Although applicant

admitted that such information could be supplied (Hearing Nov. 12, 1941, R. 119, 120, 267).

Applicant disclaimed any information or knowledge with respect to the portion of traffic which might be moved wholly by truck (Hearing Nov. 12, 1941, R. 121, 267). But the record or the prior hearing, as made by the railroad, shows that nearly all, or up to 95 per cent, of the traffic would have a prior or subsequent movement by rail (Sub. 1, R. 31, 122; Sub. 3, R. 20, 22, 53, 54). Can it be possible that the Commission isn't concerned with what the facts may be?

Applicant had no information, knowledge or views with respect to mileage, tonnage or any other basis upon which key point restrictions could be established (Hearing Nov. 12, 1941, R. 127). But in the face of this situation, the Commission did, without evidence, remove the "rail haul restrictions" and designated key points, and before it a petition for modification of key point restrictions, all on a record that has been closed by the examiner (Hearing Nov. 12, 1941, R. 299).

Applicant disclaimed any knowledge as to the operation [fol. 145] of trucks by its agent, the Railway Express Agency (Hearing Nov. 12, 1941, R. 106, 107); although applicant did know that some of its motor carrier certificates were operated for it by the Railway Express Agency (Hearing Nov. 12, 1941, R. 109).

Applicant admitted that it had an interest in boat lines which it connected with (Hearing Nov. 12, 1941, R. 109, 110), and it is a matter of common knowledge that these boat and express subsidiaries are monopolistic and "freeze out" arrangements so far as independent motor carriers are concerned.

Applicant admitted that it proposed to use railroad bills of lading and apply railroad rates to the truck operations for both coordinated and substituted service (Sub. 1, R. 30; Sub. 3, R. 6; Hearing Nov. 12, 1941, R. 114). How can the reasonableness of truck transportation under rail rates and without accounting requirements ever be tested or policed?

Applicant had no knowledge of the existing truck service by independent motor carriers and refused to consider joint arrangements with such carriers (Sub. 1, R-30, 33, 96, 97, 122; Sub. 3, R-56, 60-62, 65; Sub. 7, R-35, 58) and at the hearing Nov. 12, 1941, the examiner refused to hear testi-

mony in connection with service of independent motor carriers (R-116, 117). Since when has the existence of adequate service by public carriers ceased to be important in connection with the determination of public convenience and necessity?

Denial of Motions

The Antitrust Division of the Department of Justice moved that the applicant be required to furnish certain statistical information (Hearing Nov. 13, 1941, R-268). The examiner denied the motion (R-270). The Antitrust Division requested that its motion be submitted to the Commission and not be finally passed on by the examiner. The examiner stated, "Yes. It is on the record" (R-270).

Protestants moved that the applicant be required to show its motor truck operations in their entirety (R-270). The examiner denied the motion (R-271).

The American Trucking Associations supported the motion made by the Antitrust Division. In addition, said Association moved that the hearing be continued for 60 days in order that protestants be given time to examine applicant's evidence and prepare their case (R-271).

The American Trucking Associations made a further [fol. 146] motion that the proceedings be broadened to determine the effect which modification of condition 3 (key point) would have on condition 1 (auxiliary and supplemental service) (R-272), (R-212-215).

The American Trucking Associations moved that applicant be required to submit information showing the tonnage and revenue of l. c. l. business handled by the Railway Express Agency (R-273).

The American Trucking Associations moved the Commission not to close this record until the full Commission had passed on these motions (R. 273).

The Examiner denied the motion to continue the hearing (R. 275) and — respect to the other motions, said, "You are of course at liberty to petition the Commission for further hearing if you so desire" (R-275).

The American Trucking Associations pointed out the necessity for action on the motions before the record could be closed in order that it might avail itself of its remedies in case the motions were denied (R-276).

The Antitrust Division objected to the record being closed before action on the motions was taken (R-277).

After the examiner had consistently refused to permit cross-examination, refused to hear witnesses and had forced some of protestants to make an "offer of proof" (R. 229) and the witnesses had left the hearing and gone home, the examiner told counsel for the Antitrust Division, "I will be glad to hear any witnesses you have right now. As a matter of fact the question of holding the case open, that would be impossible" (R-278, 299).

The Antitrust Division joined in the motions made by the American Trucking Associations (R-282).

The American Trucking Associations moved that 45 days be allowed for briefs on the pending motions (R-298).

All of these motions were denied or disregarded and the record was closed and the parties ordered to file briefs by January 14, 1942 (R-299).

We respectfully submit that there is no procedure under the Commission's rules of practice or any procedure known to the law whereby an examiner may disregard motions directed to the Commission, order the record closed and fix a final date for filing briefs. These motions run to substantive questions of both fact and procedure. The motions were earnestly made and were and are now earnestly insisted upon.

[fol. 147] There is a crying need for some procedure, some principles of evidence, some basis for considering these applications. We respectfully submit that the basis must rest on something more than the "managerial discretion of the railroads." As shown by the record in the Seaboard case, "managerial discretion" knows of no test or basis whatever for determining key points or any other restrictions or any reason for complying with any provisions of the Motor Carrier Act.

Wherefore, petitioner prays that this petition be granted and that such further relief be had as may to the Commission seem appropriate.

Respectfully submitted, American Trucking Associations, Inc., by J. Ninian Beall, General Counsel.

Dated at 1424 16th Street, N. W., Washington, D. C., December 5, 1941.

Certificate of Service

Copy of this petition has been served on applicant, Seaboard Air Line Railway, and other parties of record, by depositing same in the U. S. Mail.

J. Ninian Beall.

EXHIBIT R

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

No. MC-86687 and Subs. 1-20

Seaboard Air Line Railway (Legh R. Powell, Jr., and Henry W. Anderson, Receivers)

Upon consideration of the record in the above-entitled matters, of petitions filed by the Antitrust Division, United States Department of Justice, and American Trucking Associations, for further hearing to receive additional evidence and to compel applicant to produce certain information; and good cause appearing:

It is ordered, That the said petitions be, and they are hereby denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 148]

EXHIBIT S

34 MCC-441

Interstate Commerce Commission

No. MC-86687*

SEABOARD AIR LINE RAILWAY COMPANY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Motor Operations—Gaston-Garnett, S. C.

Submitted January 21, 1942. Decided July 6, 1942

On further hearing, condition 3 attached to certificates granted in prior reports, 28 MCC-5 and 21 MCC-773, au-

* This report embraces also the following applications by the same applicants: No. MC-86687 Sub. Nos. 1 to 10, inclusive, and Sub. Nos. 15, 18, and 19.

thorizing operation as a common carrier by motor vehicle, in interstate or foreign commerce, in the transportation of property over regular routes in rendering a service which is auxiliary to or supplemental of applicants' rail service between points on their rail lines in Virginia, North Carolina, South Carolina, and Florida; modified. Order entered vacating and setting aside the prior orders and denying the applications except to the extent granted by the prior reports as modified herein.

Charles T. Ables and *William H. Delaney* for applicants.

J. Ninian Beall, Reuben G. Crimm, C. H. Noah, W. R. Leland, H. Y. McPherson, Clifford T. Inglis, C. Mulholland, R. C. Atwood, and *H. C. Smiley* for protestants.

Arne C. Wiprud for intervener.

Report of the Commission on Further Hearing

By the Commission:

All of these applications were filed by Legh R. Powell, Jr., and Henry W. Anderson, receivers for the Seaboard Air Line Railway Company. Certificates in these proceedings were originally granted by Division 5. With the exception of that in Sub. No. 19, they were authorized in *Seaboard A. L. Ry. Co. M. Operation—Gaston-Garnett, S. C.*, 17 MCC-413. Subsequently in *Seaboard Air Line Ry. Co. Extension —Tampa, Fla.*, 21 MCC-773, the extension between Tampa and Sebring, Fla., applied for in Sub. No. 19 was authorized. [fol. 149] Together, the prior reports of the division found public convenience and necessity to require operations by the applicants as a common carrier of property by motor vehicle in interstate or foreign commerce over regular routes in Virginia, North Carolina, South Carolina, and Florida, subject to the following conditions:

1. The service by motor vehicle to be performed by applicants shall be limited to service which is auxiliary to, or supplemental of, the service of the Seaboard Air Line Railway Company.

2. Applicants shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway Company.

3. Shipments transported by applicants by motor vehicle shall be limited to those which move under a

through bill of lading covering, in addition to movement by motor vehicle, a prior or subsequent movement by rail.

4. Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict applicants' operations by motor vehicle to service which is auxiliary to or supplemental to the rail service of the Seaboard Air Line Railway Company.

Condition 3, which required a prior or subsequent movement by rail and will for convenience be referred to herein as the "rail-haul" condition, was assailed by the applicants as preventing an economical, efficient, and adequate rail-motor service. Upon their petition these proceedings, except Sub. No. 19, were reopened together with a number of others in which similar conditions had been imposed. After oral argument and reconsideration in *Kansas City S. Transport Co., Inc., Com. Car. Application,* 28 MCC-5, we substituted for the rail-haul condition a so-called "key point" condition which revised condition reads as follows:

3. No shipments shall be transported by applicants as a common carrier by motor vehicle from Gaston, S. C., to Swansea, North, Denmark, Fairfax, and Garnett, S. C., nor from Garnett to Estill, Fairfax, Denmark, and Gaston, S. C., nor between any of the following points, or through or to or from more than one of said points: Raleigh, Henderson, Hamlet, Aberdeen, Sanford, Apex, Southern Pines, Laurinburg, Maxton, Penbrook, Lumberton, Bladenboro, Wilmington, Monroe, Charlotte, Lincolnton, Shelby, and Ellenboro, N. C.; Richmond and Petersburg, Va.; Columbia, Cheraw, McBee, Greenwood, and Clinton, S. C.; and River Junction, Quincy, Tallahassee, and Monticello, Fla.

Upon petition of the applicants seeking the elimination of [fol. 150] the rail-haul condition still carried in the certificate in Sub. No. 19 and the modification of the key-point condition prescribed in our prior report, we reopened the applications for further hearing. A further hearing has been held and briefs have been filed. Certain motor carriers, The American Trucking Associations, Inc., and Rail-

way Labor Executives' Association oppose the changes requested. The Antitrust Division of the United States Department of Justice intervened.

At the hearing numerous motions were made by protestants and intervener but they need not be considered here. They were renewed by petitions, following the close of the hearing, asking for reopening and rehearing of the proceedings and admission and production of further evidence. They were denied by our order of January 21, 1942.

Applicants assert that the prescribed key-point condition would not be objectionable if modified to provide as follows:

> No shipments shall be transported by applicants as a common carrier by motor vehicle from Richmond, Va., to or through Henderson, N. C., or from or through Henderson to Richmond; from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson; from or through Hamlet, N. C., to or through Raleigh, N. C., or from or through Raleigh to or through Hamlet; from Wilmington, N. C., to or through Hamlet; from Charlotte, N. C., to or through Monroe, N. C., or from Monroe to Charlotte, not including shipments originating at or destined to points between Charlotte and Rutherfordton, N. C.; from Jacksonville, Fla., to Lake City, Live Oak, Madison, Tallahassee, Quincy and River Junction, Fla., not including shipments from Jacksonville destined to any other points between Jacksonville and River Junction; from River Junction and Tallahassee to Jacksonville, not including shipments from River Junction or Tallahassee destined to any other points between River Junction and Jacksonville; from Tallahassee to Quincy and River Junction, not including shipments destined to any other point between River Junction* and Jacksonville.

They also assert that the rail-haul condition in the Sub. No. 19 certificate should be eliminated. Protestants, other than Railway Labor Executives' Association, and intervener take the view that the modifications sought by appli-

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* River Junction has since been renamed Chattahoochee which designation will be used hereinafter.

cants will adversely affect the operations of existing motor carriers and unduly restrain competition in the motor carrier field.

[fol. 151] The applicants' motor vehicle service has been and will continue to be of a different character from that performed by protestants or motor carriers generally, and this is so whether we grant or deny the requested charges, which would merely relieve applicants from what they consider burdensome limitations in performing that service, rather than change the character of service previously authorized. Applicants' motor vehicle operations have been and will continue to be limited to the handling of merchandise rail traffic to and from points on their rail line as a substitute for train service. It is but a substitution of a more efficient for a less efficient means of service. The traffic has been and will continue to be rail traffic which moves at rail rates and on rail billing and which the railway has been and will continue to be under an obligation to transport. Applicants, as a motor carrier, do not solicit traffic from the general public but merely utilize motor vehicles in fulfilling their undertaking to transport as a railway. The motor vehicle service is auxiliary to or supplemental of applicants' rail service and is so limited by condition 1. The modifications requested will in no way change the character of the service applicants are authorized to perform as a motor carrier; nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor-carrier field.

Protestant, Railway Labor Executives' Association, acknowledges that some modification of the key-point condition should be made and agrees with certain of the changes suggested by applicants. It contends, however, that in other respects the suggested changes do not meet the purpose of a key-point condition in that they would permit the applicants to handle certain shipments by motor vehicle long distances through points between which through train service is maintained, and would afford no protection against long distance motor vehicle operation should extensions to unconnected routes be authorized in the future. It also takes the view that the rail-haul condition contained in the authority granted over the Tampa-Sebring, Fla., route in Sub. No. 19 should be retained as no points on that route could properly be considered key points between which

through train service is maintained and as the applicants voice no objection to the existing condition from an operating standpoint.

The original rail-haul condition which restricted the authorized operations to coordinated movements partly by [fol. 152] railroad and partly by motor vehicle was too broad in that it permitted the applicants to handle by motor vehicle over long distances and between large and important points shipments which should properly move a greater portion of the distance, or wholly, in the superior through-train service. On the other hand, it was too restrictive, because in many instances it required applicants to continue between small points the slow and costly way-freight train service which the substituted service was intended to avoid. It was to remedy these defects that we substituted a key-point condition. We pointed out, however, that in view of the limited record difficulties had been encountered in determining the key points in all instances, and that any need for modification of the designated key points should be called to our attention by appropriate petition.

The principal objection is that the designated key points include many points which are not actually key points so that in addition to prohibiting the substitution of truck service for through-train service, it also, and to a greater extent than the former rail-haul condition, prohibits the substitution of truck service for local way-freight station to station train service. This is particularly true of the numerous small intermediate points on many of the routes which have been designated as key points but which in many instances are less than 25 miles apart. For example, on the Hamlet-Wilmington route, a distance of 110 miles, there are five named key points not including the termini, three of which are not more than approximately 10 miles apart with buf two or three intervening stations. Some of the designated key points have package car service, while others have package car service only in the sense that a package car is there set out in local service to enable distribution to nearby points by "switchers" operating over portions of that particular segment. Obviously, a condition which prohibits the handling of shipments by motor vehicle between such points or to or through or from more than one of such points prohibits the improvement in the rail service which the substitute service was intended to

accomplish. Accordingly, the applicants suggest a key-point condition which it considers not objectionable from an operating standpoint.

There is no doubt that the key-point condition should be modified if the full benefits of substituted service are to be realized, but it does not follow that applicants' suggested [fol. 153] condition should be adopted. As Railway Labor Executives' Association points out, the suggested condition is predicated upon a consideration of each of the routes separately rather than of the operations as a whole, and in many instances would permit the handling of shipments by motor vehicle over long distances through points between which through-train service is and will be maintained. As partial support for such handling applicants assert it will avoid transfer of lading, but they operate, or propose to operate, separate trucks over each of the routes except the two routes which combined extend between Jacksonville and Chattahoochee and are conducted as one operation. Accordingly transfer of lading will take place whether it be between car and truck or between trucks. Furthermore, transfer of lading is a necessary incident of substituted service. A key point condition is intended to prevent the use of trucks in lieu of economical and efficient train service. It is not merely a question of length of haul but includes a consideration of the traffic volume, its directional flow, etc. Continued use of lightly loaded freight cars should be discouraged especially at a time when they may be utilized to better advantage. A modification of the prior condition which aids in attaining the maximum in operating efficiency, economy, and use of equipment is not only desirable but is required in the public interest.

Applicants' requested modification, although directed primarily to the elimination of the numerous designated key points intermediate between the termini of each of the routes which obviously hamper accomplishment of the desired result, would as to certain of the routes require the continuance of train service in the handling of shipments from a terminal point to certain small intermediate points and from certain small intermediate points to the terminal point, but at the same time permit all-motor movements over the entire route. It may be that the traffic volume and its directional flow permit efficiency and economy of operation in this manner, but we are inclined to believe that here

the intermediate points, except those of importance which are actually key points, should generally be eliminated entirely, permitting freedom of action on the part of management to utilize either means of service in the handling of shipments whichever provides the most efficient and economical service at the time. Several of the routes join to form a continuous operation extending several hundred miles while others have no physical connection with other [fol. 154] routes. Generally speaking, the termini of each of the connecting routes are relatively large cities or important junction points and on the whole a key-point condition limited to the termini and prohibiting the handling of shipments from or to or through more than one of them will permit motor vehicle service in lieu of the slower and more costly way-freight train station to station service and prevent the handling of shipments over long distances where economy and efficiency of operation require that such shipments move either wholly or for a greater portion of the distance by rail in consolidated carloads between break-bulk or concentration points. In certain instances such a condition might not be wholly satisfactory from the standpoint of existing service, but this would be true only in minor instances. On the other hand, trucks are to be utilized for the first time over several routes previously authorized but not operated, and this will no doubt require numerous changes in the existing services, both rail and motor, to attain the maximum benefits of operating efficiency and economy. Any minor difficulties might very well be overcome in the process.

Two unconnected routes are here involved and no through-train service is maintained between any two points on them. Protestant admits that economical and efficient operations requires motor-vehicle service between all points on these routes but as a protection against long-haul motor-vehicle operations in the event of future motor vehicle extensions to these routes, urges a condition prohibiting the handling of shipments by motor vehicle to of from one terminal point through the other. This, protestant urges, will avoid difficulties inevitably encountered in attempting to impose a key-point condition with respect to individual extensions. These two routes extend between Great Falls and Greenwood, S. C., and between Gaston and Garnett, S. C. They are separated from applicants' other routes only by rela-

tively short distances and both Greenwood and Garnett have through-train service to and from the nearest key-point on applicants' routes beyond these unconnected routes. It does not appear that a key-point condition would be applicable solely to extensions over the connecting segments. Under the circumstances the object protestant has in mind may be accomplished merely by including the points having through-train service as key points in connection with applicants' operations as a whole. A similar situation arises in connection with the Tampa-[fol. 155] Sebring route where protestant urges retention of the rail-haul condition. We are of the opinion, however, that this condition should be eliminated in keeping with our prior decisions. This route, however, is connected with applicants' other Florida routes here involved by another route between Jacksonville and Tampa over which applicants conduct motor-vehicle operations under an application pending in another proceeding. Tampa is an important point having through-train service to and from Jacksonville. While all-motor service is required between all points on the Tampa-Sebring route, traffic moving between such points and Jacksonville should move between Jacksonville and Tampa by rail. Under the circumstances, Tampa will be included as a key point in connection with applicants' operations as a whole.

We find that condition 3, prior reports 21 MCC-773, and 28 MCC-5, should be modified to read as follows:

> No shipments shall be transported by applicants as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points, or to or through or from more than one of said points: Richmond, Va., Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee and Tampa, Fla.

An appropriate order will be entered.

Certificates have already been issued in each of the applications and applicants will be expected, as of the

effective date of the order herein, to surrender such certificates, whereupon an amended certificate conforming with the conclusions herein will be issued.

LEE, Commissioner, dissenting:

In the report of the Commission on oral argument and reconsideration, 28 MCC-5, the majority found that the key point condition there prescribed should replace the original condition 3 prescribed by Division 5. Thereafter, upon petition of applicants, the proceedings were reopened for further hearing "solely to determine whether condition 3 as set forth in the prior report, 28 MCC-5, should be modified, and if so, the extent of such modification." In the [fol. 156] instant report a substantial modification of the key points is made upon a record, which the report itself indicates, is inadequate. For instance, the record contains no evidence of the volume of less-than-carload traffic moving between points on the lines of railroad operated by applicants. In petitions filed by the American Trucking Associations and the Antitrust Division following the close of the last hearing, the inadequacy of the record was pointed out and a further hearing was sought. These petitions were denied. In my opinion, the original condition 3 prescribed by Division 5 should be retained. However, accepting the conclusions of the majority that the original condition should be replaced by a key point condition, I cannot approve the determination of key points upon the present inadequate record. The further hearing sought by the American Trucking Associations and the Antitrust Division should be granted.

Commissioner Johnson did not participate in the disposition of this proceeding.

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of July, A. D. 1942.

No. MC-86687 and Subs. 1-10, 15, 18, 19

Seaboard Air Line Railway (Leigh R. Powell, Jr., and Henry W. Anderson, Receivers)

It appearing, That on April 8, 1941, the Commission entered its report and order in Nos. MC-86687 and Sub. Nos.

1 to 10, inclusive, and 15 and 18, and that on February 17, 1940, the Commission, Division 5, entered its report and order in No. MC-86687 (Sub. No. 19), granting applicants certificates to conduct certain motor-carrier operations in interstate or foreign commerce, and that upon applicants' petition and for good cause shown said proceedings were reopened for further hearing solely to determine whether condition 3 as set forth in the prior reports should be modified, and if so, the extent of such modification.

And it further appearing, That such further hearing has been held and that a full investigation of the matters and things involved in these proceedings, on further hearing, has been made and that the Commission, on the date hereof, has made and filed its report on further hearing herein containing its findings of fact and conclusions thereon, [fol. 157] which report and the prior reports and accompanying orders above mentioned are hereby referred to and made a part hereof.

It is ordered, That the prior orders of April 8, 1941, and February 17, 1940, be, and they are hereby, vacated and set aside.

And it is further ordered, That the said applications, except to the extent granted by the prior reports as modified by the said report on further hearing, be, and they are hereby, denied effective September 8, 1942.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

EXHIBIT T

Certificate of Public Convenience and Necessity

No. MC-86687 *

Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) Norfolk, Va.

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 30th day of November, A. D. 1942.

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* This certificate also embraces MC-86687 Subs. 1 to 10 inclusive, and Sub. Nos. 15, 18 and 19, Seaboard Air Line Railway Company (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), Extension of Operations.

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to rec-ive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding.

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

[fol. 158] *General commodities,* over regular routes,

Between Hamlet, N. C., and Columbia, S. C., as follows:

From Hamlet over North Carolina Highway 77 to the North Carolina-South Carolina State line, thence over South Carolina Highway 77 to junction U. S. Highway 1, thence over U. S. Highway 1 to Cheraw, S. C., thence over South Carolina Highway 9 to Pageland, S. C., thence over South Carolina Highway 151 to McBee, S. C., and thence over U. S. Highway 1 to Columbia; and

Return from Columbia over U. S. Highway 1 to junction South Carolina Highway 77, thence to Hamlet as specified above.

Between Richmond, Va., and Henderson, S. C.:

From Richmond over U. S. Highway 1 to South Hill, Va., thence over Virginia Highway 138 to junction U. S. Highway 1, and thence over U. S. Highway 1 to Henderson, and return over the same route.

Between points in Virginia, as follows:

From Richmond over Virginia Highway 10, to Chester;

From Richmond over U. S. Highway 1 to junction unnumbered highway, thence over unnumbered highway to Rawlings; and

Return over these routes to Richmond.

Between points in North Carolina, as follows:

From Henderson over U. S. Highway 1 to Franklinton, thence over North Carolina Highway 56 to Louisburg, thence return over North Carolina Highway 56 to Franklinton, and thence over U. S. Highway 1 to Raleigh;

From Hamlet over North Carolina Highway 77 to Marston, thence over U. S. Highway 1 to Sanford, thence over U. S. Highway 501 to Pittsboro, thence over U. S. Highway 64 to junction North Carolina Highway 55, thence over North Carolina Highway 55 to Apex, and thence over U. S. Highway 1 to Raleigh;

From Hamlet over U. S. Highway 74 to Lumberton, thence over North Carolina Highway 211 to Bolton, and thence over U. S. Highway 74 to Wilmington;

From Monroe over U. S. Highway 74 to Charlotte, thence over North Carolina Highway 27 to Lincolnton, thence over North Carolina Highway 150 to junction U. S. Highway 74, thence over U. S. Highway 74 to junction North Carolina Highway 120, thence over North Carolina Highway 120 to Cliffside, thence over U. S. Highway 221 to Caroleen, thence over unnumbered highway to Ellenboro, and thence over U. S. Highway 74 to Rutherfordton;

From Monroe over North Carolina Highway 75 to Waxhaw; and

[fol. 159] Return over these routes to Henderson, Hamlet and Monroe. Between points in South Carolina, as follows:

From Gaston over South Carolina Highway 3 to Swansea, thence over South Carolina Highway 5 to Olar, thence over South Carolina Highway 64 to junction South Carolina Highway 33, and thence over South Carolina Highway 33 to junction South Carolina Highway 5, and thence over South Carolina Highway 5 to Garnett;

From Greenwood over South Carolina Highway 7 to Chester, thence over South Carolina Highway 97 to Great Falls;

From Greenwood over South Carolina Highway 7 to junction unnumbered highway, thence over unnumbered highway to Renno;

From Greenwood over South Carolina Highway 7 to junction unnumbered highway, thence over unnumbered highway to Leeds; and

Return over these routes to Gaston and Greenwood.

From McBee over South Carolina Highway 151 to Hartsville, thence over U. S. Highway 15 to junction South Carolina Highway 403, thence over South Carolina highway 403 to Timmonsville, and thence over U. S. Highway 76 to Sumter; and

Return from Sumter over U. S. Highway 15 to junction South Carolina Highway 34, thence over South Carolina Highway 34 to Darlington, and thence over South Carolina Highway 151 to McBee.

Between points in Florida, as follows:

From Jacksonville over U. S. Highway 90 to Live Oak;

From Live Oak over U. S. Highway 90 to junction Florida Highway 43, thence over Florida Highway 43 to Lloyd, thence over unnumbered highway to Capitola, thence over Florida Highway 107 to junction Florida Highway 500, thence over Florida Highway 500 to Tallahassee, and thence over U. S. Highway 90 to Chattahoochee;

From Live Oak over U. S. Highway 90 to Monticello, thence over U. S. Highway 19 to Drifton;

From Live Oak over U. S. Highway 90 to junction Florida Highway 42, thence over Florida Highway 42 to Aucilla;

From Jacksonville over U. S. Highway 17 to Yulee, thence over Florida Highway 13 to Fernandina; and

Return over these routes to Jacksonville and Live Oak.

Between Tampa, Fla., and Sebring, Fla., as follows:

From Tampa over Florida Highway 23 to junction U. S. Highway 41, thence over U. S. Highway 41 to junction Florida Highway 79, thence over Florida Highway 79 to Lake Wales, Fla., thence return from Lake Wales over Florida Highway 79 to junction unnumbered highway, [fol. 160] thence over unnumbered highway to junction U. S. Highway 17, thence over U. S. Highway 17 to Winter Haven, Fla., thence over unnumbered highway to Auburndale, Fla., thence return from Auburndale over unnumbered highway to Winter Haven, thence over U. S. Highway 17 to junction unnumbered highway, thence over unnumbered highway to junction Florida Highway 79, thence over Florida Highway 79 to Lake Wales, and thence over Florida Highway 8 to Sebring; and

Return from Sebring over Florida Highway 8 to Lake Wales, thence over Florida Highway 79 to junction U. S. Highway 41, thence over U. S. Highway 41 to junction

Florida Highway 23, and thence over Florida Highway 23 to Tampa.

Service is authorized to and from all intermediate points on the above-specified routes, which are stations on the rail lines of the Seaboard Air Line Railway Company.

The service authorized herein is subject to the following conditions:

The service by motor vehicle to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, the service of the Seaboard Air Line Railway Company;

Said carrier shall not serve any point not a station on the rail lines of the Seaboard Air Line Railway Company;

No shipments shall be transported by said carrier as a common carrier by motor vehicle from Richmond to Petersburg, Va., not including shipments moving from Richmond through Petersburg to points between Petersburg and Henderson, N. C., from Monroe to Charlotte, N. C., or from Charlotte to Monroe not including shipments moving from or to Rutherfordton, N. C., or points between Charlotte and Rutherfordton, nor between the following points or to or through or from more than one of said points: Richmond, Va.; Henderson, Raleigh, Hamlet, Monroe, and Wilmington, N. C.; Hartsville, Columbia, Garnett, and Greenwood, S. C.; and Jacksonville, Tallahassee, and Tampa, Fla.

Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict said carrier's operations by motor vehicle to service which is auxiliary to, or supplemental to the rail service of the Seaboard Air Line Railway Company.

It is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And it is further ordered, That this certificate shall supersede the certificate issued in this proceeding on September 30, 1939, and that issued under Docket No. MC-86687, [fol. 161] Sub. 19, on April 4, 1940, which are hereby canceled.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

Exhibit U

Summary of Exceptions, Motions and Petitions by Protestants

June 11, 1937—MC-86687, Sub. 3. Protestant's telegram *gram* to Commission requesting consolidation and hearing by examiner.

June 14, 1937—MC-86687 and Subs. 1 to 7. Petition of Southern Motor Carriers' Rate Conference to consolidate applications.

August 19, 1937—MC-86687 and Subs. 1 to 7. Railway's brief in support of applications.

August 20, 1937—MC-86687 and Subs. 1 to 7. Brief of Southern Motor Carriers' Rate Conference and exceptions to Joint Board's procedure and refusal to hear evidence.

December 3, 1937—MC-86687 and Sub. 3. Exceptions of Southern Motor Carriers' Rate Conference to recommended reports and orders of Joint Boards.

December 4, 1937—MC-86687, Sub. 1. Railway's exceptions to report and order of Joint Board.

December 4, 1937—MC-86687 and Sub. 1. Special exceptions to report and order of Joint Board.

December 14, 1937—MC-86687, Subs 2 to 7. Railway's exceptions to reports and orders of Joint Boards.

December 14, 1937—MC-86687, Sub. 4. Exceptions by Southern Motor Carriers' Rate Conference to report and order of Joint Board.

December 15, 1937—MC-86687 and Sub. 3. Railway's answer to exceptions by Southern Motor Carriers' Rate Conference to Joint Board's report and order.

December 23, 1937—MC-86687, Sub. 4. Railway's reply to protestant, Southern Motor Carriers' Rate Conference, exceptions to report and order of Joint Board.

January 26, 1938—MC-28984, MC-86687, and Subs. 8 to 17. Petition of Southern Motor Carriers' Rate Conference [fol. 162] to intervene on behalf of 450 named motor carriers.

January 27, 1938—MC-86687, Sub. 8. Exceptions of Southern Motor Carriers' Rate Conference to report and jurisdiction of Joint Board.

January 27, 1938—MC-28984, MC-86687, and Subs. 1 to 17. Motion of Southern Motor Carriers' Rate Conference to consolirate hearings.

February 1, 1938—MC-86687, Sub. 8. Railway's reply to exceptions by Southern Motor Carriers' Rate Conference.

February 16, 1938—MC-86687 and Sub. 8. Order of Commission allowing intervention of Southern Motor Carriers' Rate Conference and to be treated as a party.

February 16, 1938—MC-86687, Subs 11 to 17. Order of Commission allowing intervention of Southern Motor Carriers' Rate Conference and to be treated as a party.

February 16, 1938—MC-2894 and MC-86687, Subs 1 to 17. Motion of Southern Motor Carriers' Rate Conference to consolidate denied.

February 16, 1938—MC-86687, Subs. 9 and 10. Petition of Southern Motor Carriers' Rate Conference to intervene granted.

March 9, 1938—MC-86687, Subs. 9 and 10. Exceptions of L & L Freight Lines, Inc., to report and jurisdiction of Joint Board.

March 18, 1938—MC-86687 and Subs 1 to 8. Oral argument before Division 5.

April 16, 1938—MC-86687, Subs 9 and 10. Protestants' petition for oral argument denied by the Commission.

December 5, 1938—MC-86687 and Subs. 1, 11 to 14, 16, 17, and 19. Southern Motor Carriers' Rate Conference motion for consolidation of hearing (denied 1/27/39).

December 19, 1938—MC-86687 and Subs. 1 to 10, 15 and 18. Intervention of Railway Labor Executives Association granted.

January 27, 1939—MC-86687, Subs. 1, 11 to 14, 16, 17 and 19. Order of Commission allowing intervention of Southern Motor Carriers' Rate Conference and to be treated as a [fol. 163] party.

February 27, 1939—MC-86687, Sub. 19. Railway's brief before Joint Board.

February 27, 1939—MC-86687, Sub. 19. Brief of Southern Motor Carriers' Rate Conference including exceptions to hearings by Joint Boards.

July 11, 1939—MC-86687 and Subs. 1 to 10, 15 and 18. Report and order of Division 5 of the Commission denying protestants' exceptions and granting certificates—Reported 17 MCC-413.

January 30, 1940—MC-86687 and Subs. 1 to 10, 15 and 18. Railway's petition for rehearing and reconsideration of condition 3—prior or subsequent movement by rail.

February 5, 1940—MC-86687. Answer of Southern Motor Carriers' Rate Conference to railway's petition for rehearing and reconsideration.

February 6, 1940—MC-86687, Subs. 1 to 10, 15 and 18. Reply of Railway Labor Executives Association to petition of railway for modification of key point restrictions.

February 9, 1940—MC-86687, Subs. 1 to 10, 15 and 18. Reply of Acme Freight Lines, et al., to railway's petition for modification of key point restrictions.

April 5, 1940—MC-86687 and Subs. 1 to 10, 15 and 18. Petition for consolidation of hearings involving similar issues.

May 16, 1940—MC-86687 and Subs. 1 to 10, 15 and 18. Oral argument before Commission on conditions requiring prior or subsequent movement by rail.

April 28, 1941—MC-86687, Subs. 2 to 8, 10, 15 and 19. Railway's petition for removal of key point restrictions.

May 17, 1941—MC-86687, Subs. 2 to 8, 10, 15 and 19. Reply of Railway Labor Executives' Association to railway's petition for modification of key point restrictions and petition for the taking of further evidence.

[fol. 164] May 19, 1941—MC-86687 and Subs. 2 to 8, 10, 15 and 19. Answer of Southern Motor Carriers' Rate Conference to applicant's petition of February 20, 1941, for removal of key point restrictions and petition for rehearing on a new or consolidated application.

May 19, 1941—MC-86687 and Subs. 9, 10 a[illegible] 19. Answer of Flamingo Truck Lines, et al., to railwa[illegible]'s petition for removal of key points.

October 7, 1941—MC-86687 and Subs. Petition of the Department of Justice for intervention.

December 5, 1941—MC-86687 and Subs. 1 to 20. Petitions of American Trucking Associations and Department of Justice for reopening, rehearing, admission and production of evidence.

December 15, 1941—MC-86687 and Subs. Reply of railway to petitions for interventions.

January 12, 1942—MC-86687 and Subs. 1 to 10, 15, 18 and 19. Railway's brief upon further hearing.

January 13, 1942—MC-86687, Subs. 1 to 10, 15, 18 and 19. Brief of Railway Labor Executives Association.

January 14, 1942—MC-86687, Subs. 1 to 10, 15, 18 and 19. Brief of Protestants Campbell Sixty-six Express, Inc., et al.

Exhibit V

SUMMARY OF ADDITIONAL APPLICATIONS

Docket MC-86687, Sub. 11

Atlanta-Comer, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 12

Americus-Dawson, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

[fol. 165]

Docket MC-86687, Sub. 13

Americus-Ocilla, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 14

Vidalia-Pembroke, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 16

Cedartown-Cartersville, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 17

Columbus-Bainbridge, Ga.
August 30, 1937 —Application filed.
January 2, 1940 —Application dismissed.

Docket MC-86687, Sub. 20

Hamlet-Monroe, N. C.
June 22, 1940 —Application filed.
March 31, 1941 —Heard by Joint Board No. 103.
February 10, 1942 —Joint Board Report.
July 23, 1942 —Division 5 Report.

Docket MC-86687, Sub. 21

Waldo-Morriston, Fla.
June 22, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Docket MC-86687, Sub. 22

Brooksville-Tampa, Fla.
June 22, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

[fol. 166–169]

Docket MC-86687, Sub. 23

Tampa-Brooksville, Fla., via Clearwater, Fla.
June 22, 1940 —Application filed.
Jan. 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Docket MC-86687, Sub. 24

Jacksonville-Wildwood, Fla.
June 22, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Docket MC-86687, Sub. 25

Wildwood-Tampa, Fla.
September 4, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 205.
June 17, 1941 —Joint Board Report.
August 18, 1942 —Division 5 Report.
October 8, 1942 —Full Commission report and order.
October 16, 1942 —Certificate issued.

Lyon-Rhine, Ga.
Lyon-Rhone, Ga.
September 4, 1940 —Application filed.
January 27, 1941 —Heard by Joint Board No. 101.
April 29, 1941 —Joint Board Report.
January 8, 1942 —Division 5 Report.
February 25, 1942 —Certificate issued.

Docket MC-86687, Sub. 27

Lloyd-Tallahassee, Fla.
October 21, 1940 —Application filed.
May 26, 1941 —Heard by Joint Board No. 205.
July 29, 1941 —Joint Board Report.
August 18, 1941 —Division 5 Report.
October 14, 1941 —Certificate issued.

Docket MC-86687, Sub. 28

Hamlet-Monroe, N. C.
February 21, 1941 —Application filed.
March 31, 1941 —Heard by Joint Board No. 103.
February 10, 1942 —Joint Board Report.
July 23, 1942 —Division 5 Report.
September 26, 1942—Certificate issued.

[fol. 170] In the District Court of the United States for the Eastern District of Virginia

[Title omitted]

Order Permitting Amendment to Bill of Complaint—Filed November 26, 1943

Upon motion by plaintiffs and presentation of an amendment to the bill of complaint in this cause, which amendment has for its sole purpose and effect the elimination of the Southern Motor Carriers' Rate Conference as a party plaintiff, and for good cause shown, it is hereby ordered that said amendment be allowed and the bill of complaint heretofore filed shall stand amended by the elimination of the Southern Motor Carriers' Rate Conference, as a party plaintiff, and said bill of complaint is not otherwise amended.

Robt. W. Pollard, United States District Judge.

November 26, 1943.

[File endorsement omitted.]

[fol. 171] [File endorsement omitted]

In United States District Court

[Title omitted]

Amendment to Bill of Complaint to Set Aside Orders of the Interstate Commerce Commission—Filed November 26, 1943.

[fol. 172] To the Honorable Justices of the District Court of the United States for the District of Virginia:

The complaint in Civil Action 285, filed on October 21, 1943 is hereby amended by eliminating Southern Motor

Carriers' Rate Conference, 873 Spring Street, N. W., Atlanta, Georgia, as a party plaintiff.

American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K & L Transportation Company, Inc., St. Johns River Line Company, by S. W. Shelton, Attorney for Plaintiffs, Insurance Building, Richmond, Virginia.

November 24, 1943.

J. Ninian Beall, Investment Building, Washington, D. C.; Roland Rice, 1424 16th Street, N. W., Washington, D. C.; Edgar Watkins, Jr., 873 Spring Street, Atlanta, Georgia, Of Counsel.

I hereby certify that I have this 24th day of November, 1943, served copies of the foregoing amendment to bill of complaint on the defendants by mailing same by registered mail to the Secretary of the Interstate Commerce Commission, and to Arne C. Wiprud, Esquire, Special Assistant to the Attorney General, Washington, D. C.

S. W. Shelton, Attorney for Plaintiffs.

[fol. 173] In United States District Court

[Title omitted]

Answer of the United States—Filed November 29, 1943

The United States of America, one of the defendants in the above-styled action, for answer to the Bill of Complaint herein, as amended, admits all the allegations contained in the said Complaint, as amended, and that the relief prayed for should be granted by this Court.

Wherefore, this defendant prays that the relief prayed for by plaintiffs be granted by this Court, and that the several orders of the Interstate Commerce Commission, to set aside which the present action is brought, be set aside for mistake of law and failure to afford a full and fair hearing with respect to the matters under consideration in

the proceedings before the Commission in connection with which the said orders were made.

Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General; Sterling Hutcheson, United States Attorney.

[File endorsement omitted.]

[fol. 174] I hereby certify that copies of the foregoing answer were this day mailed to the following:

Samuel W. Shelton, Esquire, Insurance Building, Richmond, Virginia; J. Ninian Beall, Esquire, Investment Building, Washington, D. C.; Daniel W. Knowlton, Esquire, Chief Counsel, Interstate Commerce Commission, Washington, D. C.

Edward Dumbauld, Special Assistant to the Attorney General.

Dated this 27 day of November, 1943.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed Dec. 18, 1943

Now come the Interstate Commerce Commission, one of the defendants above named, and in answer to the complaint as amended respectfully represents:

1. The averment of subdivision I of the complaint, entitled "Jurisdiction", is admitted.

2. The averments of subdivision II of the complaint, entitled "Plaintiffs", are admitted.

3. Answering so far as is necessary the averments of subdivision III of the complaint, entitled "Preliminary Statement", the Commission denies that the separate applica-

tions of the Seaboard Air Line Railway for certificates of convenience and necessity, namely, MC-86687 (Sub-Nos. 1 to 10, inclusive, and 15, 18 and 19), constitute in fact and substance one application for integrated operating rights: The Commission denies the conclusion that said separate applications had the effect of concealing the true nature of the application and of evading the statutory require-[fol. 176] ments for hearing by the Commission: The Commission denies that it arbitrarily and capriciously made findings without evidence and that it failed or refused to perform its statutory duties or exceeded its jurisdiction in any wise whatsoever: The Commission denies that in making and entering the orders complained of it failed to conduct a proper hearing or failed or refused to hold hearings as required by law, or improperly or unlawfully delegated the hearings of said applications to several joint boards: The Commission denies that the plaintiffs were denied a fair and proper hearing.

4. Answering the averments of subdivision IV of the complaint, entitled "Orders Complained Of", insofar as they are deemed material to the issues herein, the Commission admits that such averments, recite the nature and character of the several applications of applicant railroad and the procedural steps in the disposition by it of said applications except that the certificate authorizing operations was originally issued on September 30, 1939, and not on July 6, 1942; and the Commission further admits the truth of the chronological summary of the proceedings involving said applications as set out in Exhibits "A-2" and "U", respectively, to the complaint. The Commission denies each and every other averment of said subdivision IV.

5. Answering the averments of subdivision V of the complaint, the Commission denies the legal conclusions set forth therein and denies that it acted capriciously, arbitrarily or unlawfully in referring the several applications to the respective joint boards as shown in Exhibit "A-2" to the complaint: The Commission denies that it failed to hear and receive material and pertinent evidence or that it failed to make necessary findings or that any of its findings were made without evidence: The Commission denies that it acted improperly or unlawfully or arbitrarily or capri-

[fol. 177] ciously in any respect to any and all matters alleged in said subdivision V, or that it failed to accord plaintiffs fair and reasonable hearing.

6. The Commission denies the allegations of subdivision VI of the complaint.

7. The Commission admits the factual matters alleged in subdivision VII of the complaint, but denies that it acted arbitrarily or capriciously therein in any respect.

8. The Commission denies the allegations of subdivision VIII of the complaint.

9. The Commission admits the factual matters alleged in subdivision IX of the complaint but denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever and for more complete answer to the averments of said subdivision IX refers to its report of July 11, 1939, attached to said complaint and marked Exhibit "L".

10. The Commission admits the factual matters alleged in subdivision X of the complaint, except that the Commission's order of January 24, 1941, did not reverse its order of July 11, 1939, but merely modified certain of its conditions; the Commission denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever.

11. The Commission admits the factual matters alleged in subdivision XI of the complaint, but denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever and for more complete answer to said allegations refers to its report of July 6, 1942, attached to said complaint and marked Exhibit "S".

12. The Commission admits the factual matters alleged in subdivision XII of the complaint but denies that it acted arbitrarily, capriciously or unlawfully in any respect whatsoever, and further denies the jurisdiction of the court to take cognizance of the complaint in this respect.

13. The Commission admits the factual matters alleged in subdivision XIII of the complaint, but denies that it acted arbitrarily, capriciously, or unlawfully in any respect [fol. 178] whatsoever and further denies the jurisdiction of the Court to take cognizance of the complaint in this respect.

14. The Commission denies the averments of subdivision XIV of the complaint.

15. And in further answer to the averments of the complaint the Commission avers that the findings and conclusions contained in said reports and orders of July 11, 1939 (Exhibit L), January 24, 1941 (Exhibit M), July 6, 1942 (Exhibit S), respectively, and said order of November 30, 1942 (Exhibit T), were and are and each of them was and is fully supported and justified by the evidence submitted in the proceedings before the Commission, and that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings, including the plaintiffs herein; that said reports and orders were not made or entered either arbitrarily or unjustly or without proof or contrary to the relevant evidence, or without evidence to support them; that in making and entering said reports and orders the Commission did not exceed the authority conferred upon it by law, and the Commission denies each of and all the averments to the contrary contained in the complaint.

Except as herein expressly admitted the Commission denies the truth of each and all the averments contained in the complaint insofar as they conflict either with the averments herein or with the findings and conclusions contained in said reports and orders.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, the Commission prays that the complaint be dismissed.

Interstate Commerce Commission, By: Daniel H. Kunkel, Attorney, Washington, D. C. Daniel W. Knowlton, Chief Counsel, Of Counsel, Washington, D. C.

[fol. 179] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AND NOTICE OF MOTION—Filed Jan. 6, 1944

Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company,

appear herein as parties to the above entitled cause and move for leave to intervene as defendants in this action, in order to assert the defenses set forth in their proposed answer, of which a copy is hereto attached, on the ground that said action involves the validity of orders of the Interstate Commerce Commission in proceedings before said Commission to which they were parties, and they are interested therein, and that they are entitled to intervene and [fols. 180-182] become parties as a matter of right pursuant to the provisions of Sections 212 and 213 of the Judicial Code, U. S. C. A., Title 28, Section 45a.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, Seaboard Air Line Railway Building, Norfolk 10, Virginia.

To: The Attorney General of the United States, Washington, D. C.; Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington, D. C.; Samuel W. Shelton, Esq., Attorney At Law, Insurance Building, Richmond, Va.; J. Ninian Beall, Esq., Attorney At Law, Investment Building, Washington, D. C.; Roland Rice, Esq., Attorney At Law, 1424-16th Street, N. W., Washington, D. C.

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the United States Court Room, United States Postoffice and Courthouse Building, Richmond, Virginia, on the sixth day of January, 1944, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, Seaboard Air Line Railway Building, Norfolk 10, Virginia.

[fol. 183] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—Filed January 6, 1944

This cause coming on to be heard on the motion of Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, for leave to appear as parties to and to intervene as defendants in this action, and the Court having considered said motion and the answer tendered therewith, and it appearing to the Court that notice of said motion has been duly served on all parties to this cause and that the said Receivers are entitled to become parties and should be permitted to intervene as prayed, and the Court being fully advised in the premises, it is

[fol. 184] Ordered, Adjudged and Decreed that Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, have leave to intervene in this cause and are hereby made parties thereto, and to that end may file their said answer within ten days from the date of this order in the same manner and with like effect as if named original parties to this cause.

Robt. W. Pollard, United States District Judge.

Jany. 6, 1944.

Entered and filed Richmond, Virginia.

C. K. Moran, Deputy Clerk.

I hereby certify that I have this 8th day of January, 1944, mailed a copy of the foregoing order to each of the plaintiffs and defendants as shown therein.

C. K. Moran, Deputy Clerk.

[fol. 185] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF LEGH R. POWELL, JR., AND HENRY W. ANDERSON, AS RECEIVERS OF THE PROPERTIES OF SEABOARD AIR LINE RAILWAY COMPANY—Filed Jan. 6, 1944

Come now Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, intervening defendants, and, with leave of court first obtained, file this their answer to the complaint herein.

[fol. 186]

I

Interveners admit the jurisdiction of this Court to review and set aside orders of the Interstate Commerce Commission as averred in paragraph I of the complaint, but deny that this Court has jurisdiction to remand the matter complained of to said Commission for further proceedings in accordance with paragraph 3 of the prayer of the complaint herein.

II

Interveners admit that plaintiffs American Trucking Associations, Inc., participated in some proceedings before the Interstate Commerce Commission involving the matters complained of herein, but deny that American Trucking Associations, Inc., appeared and participated in all such proceedings. Interveners are without knowledge or information as to the other averments of said paragraph II and neither admit nor deny the same, but call for strict proof thereof.

III

Interveners deny all and singular the averments of paragraph III of the complaint. With respect to the averment that the separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements reference is made to paragraph XV of this answer.

IV

(a) Interveners admit that, except as hereinafter stated, the proceedings before the Commission, the orders com-

plained of and the highway routes covered by the applications involved in this cause are as set forth in paragraph [fol. 187] IV(a) of the complaint. They deny that the certificate (Exhibit "T" to the complaint) and the Commission's order of July 6, 1942 (Exhibit "S" to the complaint) were the order and certificate originally authorizing the Interveners' operations here involved, and allege that, as shown by said Exhibit "T," said operations were first authorized, in part, by certificates issued September 30, 1939, and in part by an additional certificate issued April 4, 1940. Except as herein admitted the averments of said paragraph IV(a) are denied.

(b) Interveners admit that Exhibits "G," "H," "I," and "J" to the complaint correctly set forth petitions for, and orders of the Commission permitting, intervention. Interveners admit that all plaintiffs participated in certain of the said proceedings, but deny that each of them participated in or were parties to all such proceedings.

Interveners further admit that Exhibit "U" to the complaint summarizes chronologically certain of the various proceedings before the Commission, but allege that said Exhibit is incomplete in that it omits reference to the certificates issued by the Commission September 30, 1939, and April 4, 1940, hereinbefore in paragraph IV(a) of this answer referred to, and to the Commission's report of February 7, 1940 and the Commission's order of July 6, 1942.

Interveners further admit that Exhibit "A-3" to the complaint correctly shows the highway segments covered by the various applications involved in this suit, together with the highway segments covered by other applications which have been made by Interveners, but aver that such other applications and the highway segments covered [fol. 188] thereby are wholly irrelevant and immaterial to any issue here involved.

Interveners further admit that Exhibit "V" to the complaint correctly lists certain proceedings before the Interstate Commerce Commission, but aver that such proceedings are wholly irrelevant and immaterial to any issue here involved.

V

(a). Interveners admit that paragraph V(a) of the complaint correctly sets forth in part the provisions of Section

205(a) of the Interstate Commerce Act. Except as herein admitted the averments of said paragraph are denied.

(b) Interveners admit that paragraph V(b) of the complaint correctly sets forth Section 213(a)(1) of the Interstate Commerce Act, now repealed, and a part of Section 5(b) of said Act. Except as herein admitted the averments of said paragraph are denied.

(c) Interveners deny all and singular the averments of paragraph V(c) of the complaint.

(d) Interveners admit that paragraph V(d) of the complaint correctly quotes the National Transportation Policy set forth in the Interstate Commerce Act. Except as herein admitted the averments of said paragraph are denied.

VI

Interveners admit, as alleged in paragraph VI of the complaint, that certain of the plaintiffs, as protestants at the hearings before the Joint Boards in the proceedings here involved, challenged the jurisdiction of said Boards and the exclusion of evidence relating to services rendered [fol. 189] by said protestants in territories not involved in the proceedings before said Boards. Except as herein admitted the averments of said paragraph are denied.

VII

Interveners admit that certain of the plaintiffs, as protestants at the hearings before the Joint Boards in the proceedings here involved, filed motions with the Commission requesting consolidation of said hearings, as alleged in paragraph VII of the complaint. Except as herein admitted the averments of said paragraph are denied.

VIII

Interveners admit, as alleged in paragraph VIII of the complaint, that the Joint Boards excluded certain of the evidence set forth in said paragraph, and aver that all evidence so excluded was immaterial and irrelevant to any issue before said Boards. Except as herein admitted the averments of said paragraph are denied.

IX

Interveners admit, as alleged in paragraph IX of the complaint, that after hearing the several applications the Joint Boards in some instances recommended that the authority sought by Interveners be granted in whole or in part, and in other instances that such authority be denied. Interveners further admit that in a consolidated report and order covering all of the proceedings here involved, with the exception of one application later granted, Division 5 of the Commission granted all applications subject to the conditions set forth in said paragraph IX. Inter- [fol. 190] veners further admit that said report and order were issued without further hearing but deny that further hearing was required by law and allege that such further hearing was unnecessary and would have been improper for the reason that all evidence material to the issues in all proceedings here involved had been submitted in the hearings before the Joint Boards. Interveners further deny that the findings set forth in said paragraph IX are the only findings contained in the Commission's report. They allege that the essential effect of the Commission's findings was that the proposed operations would not be injurious to plaintiffs, but in any event Interveners deny that any such finding is required by law as a prerequisite to the granting of Interveners' applications.

Except as herein specifically admitted the averments of said paragraph IX are denied.

X

(a) Interveners admit, as alleged in paragraph X(a) of the complaint, that upon petition by Interveners for reconsideration of the order dated July 11, 1939, hereinabove referred to, the full Commission, after oral argument, issued its order dated January 24, 1941. Interveners deny that said order of January 24, 1941, reversed the previous order of July 11, 1939, and allege that although said earlier order was modified in respect of limiting conditions placed upon the authority thereby granted, said earlier order otherwise remained in full force and effect.

(b) Interveners admit, as alleged in paragraph X(b) of the complaint, that upon Interveners' petition the Com- [fol. 191] mission assigned all the proceedings here in-

volved for further hearing before an Examiner for the sole purpose of determining whether conditions previously imposed should be modified. Interveners deny that in thus granting a further hearing the Commission acceded to plaintiffs' request for a consolidation of the proceedings. They further deny that the action of the Commission in limiting the scope of the hearing was arbitrary and capricious or denied plaintiffs a fair and reasonable hearing, or was otherwise unlawful. They aver that in the hearings before the Joint Boards plaintiffs had been accorded full opportunity to adduce all evidence relevant to the issues in these proceedings, that the plaintiffs were not entitled to a further hearing, and that accordingly the subject matters to be considered at the reopened hearing were within the sole discretion of the Commission.

Except as herein specifically admitted the averments of said paragraph X(b) are denied.

XI

Interveners admit, as alleged in paragraph XI of the complaint, that the United States Department of Justice was permitted to intervene and appeared at the further hearing; but allege that said intervention and appearance are not relevant or material to any issue in this cause. They further aver that the allegations quoted in said paragraph XI of the complaint from the petition of the Department of Justice, Anti-Trust Division, to intervene, were and are untrue in fact insofar as concerned any legitimate issue before the Commission in the proceeding before it, and presented no tenable ground for intervention by said Department of Justice or justifiable reason for denial by [fol. 192] the Commission of the several applications of Interveners.

Interveners further admit that plaintiffs American Trucking Associations, Inc., and other motor carriers appeared at said further hearing and endeavored to present evidence pertaining to many subjects beyond the scope of the hearing as limited by the Commission's order, that the Commission's presiding Examiner refused to receive the evidence so offered, that petitions for further hearing were filed as in said paragraph XI set forth, and that by report and order dated July 6, 1942, the full Commission modified the conditions theretofore imposed upon Interveners' mo-

tor carrier operations by its previous order of January 24, 1941. Except as herein admitted the averments of said paragraph XI are denied.

XII

Interveners admit, as alleged in paragraph XII of the complaint, that the aforementioned order of the Commission dated July 11, 1939, conditioned the issuance of the certificate therein authorized upon compliance by Interveners with Sections 215 and 217 of the Interstate Commerce Act, but deny that the order of the full Commission of January 24, 1941, insofar as it related to Interveners, contained said condition. They further admit that the order of the full Commission of July 6, 1942, like the said order of January 24, 1941, excluded said requirement, for the reason that when said orders were issued Interveners had already complied with the provisions of said sections of the Act. Except as herein admitted, the averments of said paragraph XII are denied.

Further answering said paragraph Interveners allege that Sections 216(e) and 204(c) of the Interstate Commerce Act provide in part as follows:

[fol. 193] "Section 216(e). Any person, organization, or body politic may make complaint in writing that any * * * practice, in effect or proposed to be put into effect, is or will be in violation of this section or of Section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any * * * practice * * * whatsoever of such carrier or carriers affecting such rate, fare or charge * * * is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential, it shall determine the lawful * * * practice thereafter to be made effective * * *."

"Section 204(c). Upon complaint in writing to the Commission by any person, * * * organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier * * *, has failed to comply with any provision of this Part, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation

that the motor carrier * * * has failed to comply with any such provision or requirement, the commission shall issue an appropriate order to compel the carrier * * * to comply therewith."

Plaintiffs have filed no complaint with or otherwise sought relief from the Commission for the alleged failure of the Commission to require Interveners to comply with said Sections 215 and 217, or for the alleged prejudice to plaintiffs claimed to have resulted therefrom, and the plaintiffs having thus failed to exhaust their remedy before the Commission provided by the foregoing provisions of the Interstate Commerce Act, this Court may not take cognizance or adjudicate in respect of said alleged violations.

XIII

Interveners deny the averments of paragraph XIII of the complaint.

Further answering said paragraph, Interveners allege that plaintiffs have filed no complaint with or otherwise sought relief from the Commission for the alleged failure of the Commission to require Interveners to comply with the provisions of Section 220 of the Interstate Commerce [fol. 194] Act, or for the alleged prejudice to plaintiffs claimed to have resulted therefrom, and the plaintiffs having thus failed to exhaust the remedy provided by Section 204(c) of said Act hereinabove referred to, this Court may not take cognizance or adjudicate in respect of said alleged violation.

XIV

Interveners deny the averments of paragraph XIV of the complaint.

Further answering said paragraph Interveners aver that if in fact plaintiffs suffered injury in the respects set forth in said paragraph, whether such injury required or warranted the denial of the Interveners' applications rested in the sound discretion of the Commission, and that, the Commission having considered and decided such matters upon substantial evidence, its action is final and cannot be disturbed in a judicial proceeding.

XV

Further answering the complaint Interveners allege:

(a) As found by the Commission, the purpose and effect of Interveners' motor carrier operations are to improve their service by coordinating rail and motor operations, using their rail lines for long distance transportation and their motor trucks to deliver and distribute small shipments carried in less-than-carload lots to and from stations at which the rail cars are loaded or unloaded, or to transport such shipments by highway between nearby stations for short distances. The findings of the Commission that the public and the railroad would derive material advantage from such coordination and that such coordination [fol. 195] would be in the public interest are fully set forth in the Commission's reports herein involved.

For the purpose of effectuating improvement in their service as hereinabove recited Interveners selected certain segments of the Seaboard system on which this type of service was especially desirable and practicable, and applied to the Commission for certificates authorizing the motor carrier operations paralleling such segments. The contiguity of certain of the routes thus selected was wholly fortuitous, and at the hearings conducted by the Joint Boards the evidence for the Interveners showed without contradiction that, with a few minor exceptions, each route was designed to serve only the territory embraced within its termini, and was to be operated separately and independently, and that integration of the contiguous routes or continuous operation over connected routes was neither proposed nor intended.

Since the functioning of each of Interveners' proposed motor carrier routes was self-contained and independent the issues involved in each of the proceedings were wholly unrelated. Nevertheless plaintiffs, as protestants at the Joint Board hearings of Interveners' applications, persistently disregarding the uncontradicted evidence to the contrary, asserted that Interveners' applications constituted a unified project contemplating through and continuous service over contiguous routes, that the proposed operations therefore involved three or more states, that the Joint Boards hearing the applications, composed of one representative from each state traversed by the respective

separate routes, were improperly constituted under the provisions of Section 205 of Part II of the Interstate Commerce Act, and that the hearings should be consolidated and assigned to an Examiner or to differently constituted [fol. 196] Joint Boards. At each hearing, moreover, one or more of the plaintiffs sought to introduce evidence of their operations and the competitive effect of Interveners' proposals in territory removed from and not related to the particular segment then under consideration.

Interveners aver that in the light of the limited scope and function of their proposed operations, heretofore described, the proposals involved in each of their applications were properly regarded as separate projects unrelated to any other, that the composition of the Joint Boards, formed of one representative from each state traversed by the respective separate routes, conformed to the requirements of Section 205 of Part II of the Interstate Commerce Act, that evidence relating to territory other than that traversed by the route for which authority was sought in the applications immediately under consideration was properly excluded, and that the averments of the complaint, alleging that the several applications constituted in fact and substance one application for integrated operating rights and, filed separately, had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing, are wholly without factual support and are directly contradicted by the undisputed evidence of record.

(b) In composing the Joint Boards of one member from each state traversed by the route proposed in each of Interveners' separate applications, without regard for other routes for which applications were concurrently pending or had been previously filed by the same applicants, the Commission pursued an administrative interpretation of Section 205 of Part II of the Interstate Commerce Act which it has consistently followed in its administration of [fol. 197] said Part. The Commission is the body charged by law with administration of the Motor Carrier Act and its practical interpretation of the requirements of that Act in respect of the designation of the agency or agencies to conduct hearings on its behalf ought not to be disturbed by the court in this proceeding.

(c) The applications of many, if not all, of these very same plaintiffs for certificates authorizing extensions of their existing trucking operations which, in connection with their established routes, permitted through service in more than one state have been heard by Joint Boards composed of a member of the single state in which the proposed extension was situated. Having thus invoked and enjoyed the benefits of the identical procedure the legality of which they are here challenging, plaintiffs do not come into court with clean hands and are therefore not entitled to the extraordinary equitable relief which they seek.

(d) All evidence material to any legitimate issue that could have been adduced if all of the separate hearings of Interveners' applications had been consolidated was received by the Joint Boards and was submitted to and considered by the Commission before its decision was rendered. Hence plaintiffs suffered no injury or prejudice from the composition of the Joint Boards attacked by the bill of complaint, or from any other matter herein complained of.

XVI

Further answering the complaint Interveners allege that the relief sought herein is barred by the laches of the [fol. 198] plaintiffs. As set forth in paragraph IV of this answer, Interveners' motor operations here involved were originally authorized in part by Certificates issued by the Commission on September 30, 1939, and in part by an additional Certificate issued on April 4, 1940. The issues herein presented had been raised in the hearings before the Joint Boards, and from and after the issuance of the several Certificates hereinbefore in this paragraph referred to the remedy now sought was available to the plaintiffs through timely institution of suit to set aside and annul the said Certificates. This suit is brought more than four years after the issuance of all the said Certificates with the exception of the Certificate dated April 4, 1940, as to which the plaintiffs have delayed more than three years. In the period intervening between the issuance of the said Certificates and the filing of this action, and in reliance upon said Certificates, Interveners have invested in excess of $56,000 in equipment used in motor operations authorized by the said Certificates, have by means of said operations furnished improved transportation to the public served by

them for which there is no adequate or satisfactory substitute, and, through said operations, have dispensed with the need for the use of large numbers of railroad freight cars in the handling of the traffic now transported by their truck service. Should the relief herein sought be granted Interveners would suffer serious injury in that their investment in equipment would no longer serve any useful purpose, the public would be deprived of an established and improved form of service, an additional burden would be placed upon Interveners' railroad equipment, at a time when the demands for all forms of transportation service [fol. 199] are taxing the capacity of both rail and motor carriers, and Interveners would be compelled to attempt to replace the motor vehicles now in use with freight cars which are difficult if not impossible to obtain. If such cars should not prove available Interveners could provide no substitute for the service heretofore rendered with motor vehicles. Hence, by reason of the failure of plaintiffs to bring timely action, for which the complaint offers no reason or explanation, and in view of the intervening material changes in the position of Interveners and of the shippers and receivers of freight transported by them, now to grant the relief sought would cause Interveners and the public irreparable injury which would not have occurred had plaintiffs promptly pursued their remedies.

XVII

Interveners have not answered the allegations of the complaint made by or in behalf of Southern Motor Carriers' Rate Conference for the reason that said Southern Motor Carriers' Rate Conference has withdrawn as a plaintiff, as shown by amendment to the bill of complaint, and is no longer a party to this cause, and said allegations are therefore immaterial and irrelevant to any matter herein in issue.

Wherefore, these Intervening Defendants pray that the complaint be dismissed at the cost of the plaintiffs.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles,
Attorneys for Intervening Defendants, Seaboard
Air Line Railway Building, Norfolk 10, Virginia.

[fol. 200] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION No. 1—Filed May 3, 1944

With respect to the sufficiency of the interest of American Trucking Associations, Inc., and other plaintiffs to qualify as proper plaintiffs herein, and for that limited purpose only, it is stipulated and agreed by and between said plaintiffs and Intervenors, Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that one or more motor carrier plaintiffs operate in the territory served by each of the routes over which operation is authorized by the certificates of the Interstate Commerce Commission herein sought to be annulled, suspended and set aside.

J. Ninian Beall, Attorney for Plaintiffs. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fol. 201] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION No. 2—Filed May 3, 1944

It is stipulated and agreed by and between American Trucking Associations, Inc., Interstate Commerce Commission, and Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the properties of Seaboard Air Line Railway Company, that said Receivers, by timely action on their part, filed with the Interstate Commerce Commission, as a part of their tariffs publishing charges for the transportation of less-than-carload shipments by rail, a provision that the rates therein published shall apply to the transportation of less-than-carload shipments by motor vehicle in substitution for rail service wherever such substituted service is provided; that the points to and from which said

substituted service is provided by said Receivers are designated in a tariff concurrently filed with the said Commission known as Kipp's National Substituted Freight Service Directory No. 1-D, I. C. C. No. A-3503, M. F.-I. C. C. No. A-150, and that said provisions in the rate tariffs and the said National Substituted Freight Service Directory were filed and published by the said Receivers as in accordance with the requirements prescribed by the Interstate Commerce Commission governing the filing of tariffs by motor carriers in Ex Parte 129, 232 I. C. C. 683.

It is further stipulated and agreed that said tariffs are applicable to the substitution of motor carrier service for rail carrier service for shipments receiving a prior or sub-
[fol. 202] sequent movement by rail as well as to shipments moving entirely by motor carrier service operated by said Receivers.

It is understood and agreed that nothing herein shall preclude the said American Trucking Associations from contending that the said requirements of the Interstate Commerce Commission exceeded its powers under the Interstate Commerce Act or shall prevent the said Commission or the said Receivers from contending that the averments of the complaint herein respecting the failure and refusal of the said Commission to require the said Receivers to comply with Section 217 of the Interstate Commerce Act are not cognizable by the Court in this cause.

J. Ninian Beall, Attorney for Plaintiffs. Daniel H. Kunkel, Attorney for Interstate Commerce Commission, Defendant. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fol. 203] In United States District Court

[Title omitted]

Stipulation No. 3—Filed May 3, 1944

It is stipulated and agreed by and between American Trucking Associations, Inc., Interstate Commerce Commis-

sion and Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that upon petition by said Receivers to the Interstate Commerce Commission showing that the accounts maintained by said Receivers do not segregate the revenues and expenses of their motor carrier operations from the revenues and expenses of their rail operation, a true and correct copy of which petition is attached hereto and made a part hereof, the said Commission by order issued pursuant to Section 220 of the Interstate Commerce Act, a true and correct copy of which is attached hereto and made a part hereof, authorized the said Receivers, in accordance with its general practice in such cases, to include in their reports required by said Commission of common carriers by railroad a statement of all revenues derived from and expenses incurred in their motor carrier operations, and to that extent relieved the said Receivers from reporting separately the revenues and expenses of their rail and motor carrier operations.

It is understood and agreed that nothing herein shall preclude the American Trucking Associations, Inc., from contending that the said order of the Interstate Commerce Commission exceeded its powers under the Interstate Commerce Act, or shall prevent the said Interstate Commerce [fol. 204] Commission or the said Receivers from contending that the averments of the complaint herein respecting the failure and refusal of the Commission to require said Receivers to comply with Section 220 of the Interstate Commerce Act are not cognizable by the Court in this cause.

J. Ninian Beall, Attorney for Plaintiffs. Daniel H. Kunkel, Attorney for Interstate Commerce Commission, Defendant. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fol. 205] Copy

Seaboard Air Line Railway. L. R. Powell, Jr. and Henry W. Anderson, Receivers.

Finance and Accounting

R. Parke Jones, Chief Finance and Accounting Officer.

Norfolk, Va., January 19, 1938.

5257—5817—5898

Mr. W. P. Bartel, Secretary,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

Reference is made to order of the Interstate Commerce Commission, dated November 29, 1937, prescribing, effective January 1, 1938, a Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property subject to the Motor Carrier Act of 1935; also Commissioner Joseph B. Eastman's letter of December 21, 1937, addressed to Mr. E. H. Bunnell, Vice-President, Association of American Railroads.

The Receivers of the Seaboard Air Line Railway engage in motor operation over routes paralleling certain parts of its line of railroad, the service furnished thereby being in conjunction with and auxiliary to its rail line operations. No separate corporation is involved. Separation of the revenues earned by motor and rail operations, respectively, has not been maintained, the entire revenues from both rail and motor operations being accounted for under the Uniform System of Accounts for Steam Roads prescribed by the I. C. C.

The order of the I. C. C. dated November 29, 1937 prescribing a Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property subject to the Motor Carrier Act of 1935 defines a Class I carrier, as referred to in that order, as a carrier having average gross revenues of $100,000 or over annually from its motor operations for the three years immediately preceding January 1, 1938. As there has been no separation of the revenues

derived by Seaboard Air Line Railway from motor operations and rail operations, ascertainment as to whether such motor operations fall within the Class I classification of motor carriers is not possible for the reason that a record has not been kept of the traffic handled by our trucks in a way that would enable us to identify such traffic with the waybills.

In conformity with the suggestion contained in Commissioner Joseph B. Eastman's letter of December 21st, above referred to, application for exemption from the requirements of the Uniform System of Accounts prescribed for Class I Common and Contract Motor Carriers effective January 1, 1938 is hereby made, but for the reasons given in the next preceding paragraph such application should not be considered as implying that our operations are subject to such accounting regulations.

Very truly yours, R. P. Jones, Chief Finance and Accounting Officer.

[fol. 206] Copy

Interstate Commerce Commission

Ex Parte No. MC 17

Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property

In the matter of granting temporary examination, under certain conditions, from the requirements of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, to carriers which perform steam or electric urban or interurban railway service and motor carrier service under the same corporate entity:

Present: Joseph B. Eastman, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the petition of Seaboard Air Line Railway, dated January 19, 1938, in the above-entitled matter:

It is ordered, that the said Seaboard Air Line Railway be, and is hereby, exempted from the requirements of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, effective January 1,

1938, until the further order of the Commission, provided, however, that the accounts of the said Seaboard Air Line Railway are maintained in conformity with the accounting system described in said petition.

Dated at Washington, D. C., this 28th day of January, A. D. 1938.

By the Commission, Commissioner Eastman.

W. P. Bartel, Secretary. (Seal.)

[fols. 207-211] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION No. 4—Filed May 3, 1944

It is stipulated and agreed by and between American Trucking Associations, Inc., and Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, that Flamingo Truck Lines, Great Southern Trucking Company, Central Truck Lines and K. & L. Transportation Company each operate over routes which traverse two or more states; that from time to time each of said motor carriers has applied for and obtained from the Interstate Commerce Commission certificates authorizing extensions of its system, which extensions lay wholly within a single state but connected with and were to be operated as an integral part of previously established routes of said motor carriers for the transportation of traffic in through movement between two or more states; that the application for each such extension was referred by said Commission to a Joint Board composed solely of one member from the state in which such extension was situated; and that said motor carriers did not protest against the composition of the Joint Boards to which said proceedings had been referred.

J. Ninian Beall, Attorney for Plaintiffs. W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, Intervening Defendants.

[File endorsement omitted.]

[fols. 212-229] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Transcript of Hearing—Filed June 16, 1944

Before: Hon. Armistead M. Dobie, United States Circuit Judge; Hon. John Paul, United States District Judge; Hon. A. D. Barksdale, United States District Judge

Richmond, Virginia, June 1, 1944

[fol. 230] R. W. ROGERS, called as a witness on behalf of the intervening defendants, and being first duly sworn, testified as follows:

Examined by Mr. Abeles:

Q. Mr. Rogers, will you state your name.

[fol. 231] A. R. W. Rogers.

Q. And your occupation?

A. Assistant General Manager for the Receivers of the Seaboard Air Line Railway, Norfolk, Virginia.

Q. Are you familiar with the functions of the Receivers' motor carrier services?

A. I am.

Q. Did you participate in any of the hearings which were held by the Interstate Commerce Commission for the purpose of the Certificates which are under attack in these proceedings?

A. I participated in five of the hearings.

Q. You are then thoroughly familiar with the purpose which the Receivers hope to attain by the operation of the motor carrier services?

Mr. Dumbauld: I object to that question, if the Court please, as calling for a conclusion of some other person and the record will speak for itself when and if it is introduced here and it is the introduction of the record that is a precondition of this witness' testimony.

Judge Dobie: Let me say here that if we are going to have objections to practically every question that is asked, it is going to take a very long time. I wonder if you would [fol. 232] not in some way make a general objection and allow us to pass on those things as a whole. Will that be satisfactory? I see what you mean. To say he is thoroughly familiar with everything is a pretty wide order but won't you admit that he is pretty familiar with them at this stage?

Mr. Dumbauld: That is no doubt correct, Your Honor. Will it be understood that we have a general objection to all the testimony of the witness and that any specific objections I will make. Also, as I said before, there is an additional objection to anything that deals with matters that were discussed before the Commission and I will endeavor to limit any specific objections to anything else.

Judge Dobie: That was a pretty broad question.

Mr. Abeles: I was trying to qualify him.

Judge Dobie: Won't you admit this man is qualified to testify on these matters?

Mr. Dumbauld: Yes, Your Honor.

By Mr. Abeles:

Q. In order to show the action which was taken by the Receivers on the basis of the authority granted following the issuance of the certificates of public convenience and necessity covering the Receivers' motor carrier operations, will you describe as briefly as possible the purposes that [fol. 233] those motor carrier operations served?

Mr. Dumbauld: I don't like to keep on objecting.

Judge Dobie: I am not at all impressed with what you are trying to do. Why not limit the testimony to what the Seaboard Air Line has done on the strength of these orders?

Mr. Abeles: I don't want to impose on the wishes of the Court but it seems to me in order to make this question of laches perfectly clear, it is essential to show to the Court what the purposes to be accomplished by these operations were in order to show the changes.

Judge Dobie: Isn't that in the record?

Mr. Beall: There are several hundred pages of that in the record.

Judge Dobie: Let him say what the Seaboard did on the strength of these orders and I think the gentlemen are

willing to concede that Mr. Rogers is familiar with these proceedings.

By Mr. Abeles:

Q. How would the removal of the truck service affect the transportation facilities of the Receivers?

A. We are handling the largest volume of business in the history of the railroad. That volume began to grow late in the fall of 1939 and accelerated in 1940 and has continued [fol. 234] to accelerate to this date. In 1940 our gross business was approximately $48,490,000. In 1943 it climbed to $137,258,000. Our freight train miles increased approximately 98 per cent. Our freight net ton miles increased 200 per cent. Our passengers carried one mile increased 690 per cent.

To organize for this increase in business, to prepare an operating plant and an operating machine to meet this transportation burden, we started in to expand our facilities, to expand our service and to build for it.

Mr. Dumbauld: May it please the Court, I would like to move that the answer be stricken as unresponsive, in that the witness is telling about the general development of the railroad business due to increased traffic under war time conditions.

Judge Dobie: I think we know that pretty well.

Mr. Dumbauld: I wish it would be possible for the witness to testify as to just what, if anything, was done as a result of these particular orders that we have under attack.

Judge Dobie: We know about the increase that was put on the railroads during the war.

Mr. Abeles: I think we are dealing with a specific situation here. I think the witness is entitled to show the factual background of the changes that were made by the Receivers [fol. 235] as a result of the inauguration of the motor transportation and, in order to do that, the conditions which today would be affected by the removal of it. I assure you that he is going to be very brief and I think that we are wasting more time here by constant objections than it would take for the witness to testify.

Mr. Dumbauld: I hate to be objecting but I do wish the witness would get to the matter which I understand he is to testify to which is what, if anything, was done by the railroad in reliance——

Judge Dobie: Suppose you be very brief on that.

Judge Paul: Mr. Abeles, generally what we have in mind, speaking for myself—you are on the question of laches now. We want the witness to say something like this. Beginning in 1939, or whenever it was that the Interstate Commerce Commission first permitted us to do so and so, we went out and bought a lot of trucks and we organized that feature of our transportation, we employed so many persons, if all of these things were true; and we did this and that, showing the expenditures and the obligations and burdens that you incurred while these other people, as you say, sat quietly and allowed you to do it. That is what we are interested in.

[fol. 236] Mr. Abeles: I understand, Your Honor, but the fact that we did those things would not in and of itself support our plea of laches. We must show that we were injured and the extent to which we were injured, and that is what the witness is addressing himself to now. I assure you that in my judgment, at least, nothing he is saying is immaterial or even inconsequential.

Judge Dobie: Be very brief on that. We know that a burden has been imposed on the railroads by the war.

A. In organizing for this these trucking authorities were a part of the machine and it was with these trucking routes as a component part of our operations that we organized. If we had not had the trucks our procedure for the construction of facilities, for the organization of our service, would have gradually developed along different lines. We would very probably have in this period of time devoted ourselves to building house tracks or sidings that would let us get these merchandise trains, that we would have to use in the absence of the trucks, off of the main line so as to avoid interference with the service that we were relieved of by the use of the trucks. In this period of years we have spent millions of dollars. In spending that we spent it as a con-

[fol. 237] structive plan, based upon the use of the trucks.

By Mr. Abeles:

Q. Mr. Rogers, can you give us some specific examples of the changes that have been made in our transportation set-up as the result of the inauguration of the truck service?

A. Well, it could be a vast amount of detail, Mr. Abeles.

Q. Give us one or two.

A. One specific instance is in connection with the trucking service at Greenwood, South Carolina, to Great Falls, South Carolina, in what is known as the Georgia Division. One of the things we have done in the interest of the war effort is to change the lay-over of the crew from Great Falls, South Carolina, to Chester, South Carolina, moving these men; moving the terminal for the engines, and operating out of Chester instead of out of Great Falls. This is because we are able, with the trucks, to put the merchandise and the express into Great Falls to better advantage and without it we would have to go back to the original plan.

Q. Have you any other example?

A. Yes, the Fernandina-Jacksonville and Fernandina-Yulee service I can cite as a specific instance because in recent weeks where there was an inland waterway accident that closed the highway drawbridge we found it necessary to add freight service—train service—clearly indicating [fol. 238] that without the trucks we would again have to organize our overall train service to provide that, and during this period of time since 1939 we have disposed of some light weight equipment, some gas-electric cars that we very probably would not have disposed of had we been faced with the necessity of maintaining this type of service.

Q. Then, as I understand it, Mr. Rogers, it is your position that the situation of the Receivers would have been materially different had the plaintiffs instituted their suits shortly after the issuance by the Commission of the original reports and orders of 1939 and 1940 instead of waiting for the present time?

Mr. Dumbauld: Just a minute, if the Court please. I think that clearly calls for a conclusion.

Judge Dobie: I think that is in the nature of a conclusion.

Mr. Abeles: I am trying to summarize and I am leading up to another question.

Mr. Beall: If Your Honors please, I want to make one further objection to this testimony, now that I have heard some of it. Under Section 210 of the Motor Carrier Act, the Interstate Commerce Commission has power to grant emergency certificates for the duration of the war without a hearing to accommodate all of these situations which this [fol. 239] witness is describing. If this court were to set aside all of the orders that the Commission had entered in any of these cases, the Commission could in five minutes

issue an emergency order for the war that would take care of all the war situation.

Judge Dobie: You can bring that out in your argument.

By Mr. Abeles:

Q. Will you briefly outline the respects in which the Receivers' position would have been different had this suit been brought shortly after the issuance of the 1939 orders instead of waiting for the present time?

A. We would have organized and built our operating set-up, including tremendous quantities of facilities, on an entirely different basis to meet the then changed conditions. Just what we would have done or how we would have handled it would require a vast amount of study. It is a question I cannot answer in detail but definitely it would have been organized on a different basis.

By Judge Paul:

Q. You mean it would have been organized on a different basis provided the suit had been successful?

A. No, Judge, we would not have proceeded.

Q. Of course, you would not have proceeded until the suit was terminated?

[fol. 240] A. That is correct.

Q. Then your organization on a different basis to disregard the use of trucks would have been dependent on the outcome.

Judge Dobie: Do you want to introduce any figures about equipment and things of that kind by another witness?

Mr. Abeles: You mean the cost of equipment?

Judge Dobie: Yes.

Mr. Abeles: No, we are not pressing that point.

Cross-examination.

By Mr. Beall:

Q. Mr. Rogers, you received from the Interstate Commerce Commission a certificate to conduct an operation between Gaston and Garnett, South Carolina, did you not?

A. Yes, sir.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. Yes.

Q. When did you stop?

A. August 1, 1942.

Q. You have a certificate between McBee and Sumter, [fol. 241] do you not?

A. We do.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. We did.

Q. When did you stop?

A. August 1, 1942.

Q. You have a certificate between Henderson and Raleigh?

A. We have.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. We did not.

Q. You have a certificate between Monroe and Rutherfordton, North Carolina?

A. We have.

Q. Are you operating it?

A. We are not.

Q. Did you ever operate it?

A. We did not.

Q. You have one from Richmond, Virginia, to Henderson, North Carolina?

A. We have.

Q. Are you operating it?

[fol. 242] A. Not the entire length, no.

By Mr. Dumbauld:

Q. I believe you testified that your company had spent considerable money in a different manner than it would have done if it had not had the motor carrier operating authority; is that correct?

A. That is correct.

Q. That you would have constructed additional sidings and trackage and other rail facilities if you had not contemplated using the motor service; is that right?

A. There would have been some changes in what we have done and some additional things perhaps that we would have done.

Q. So that the expenditures you have made have been for a useful purpose, have they not?

A. They have.

Q. You do not have any excess facilities on hand at the present time, do you?

A. No.

Q. And the only thing is that you would have had additional rail facilities if you had not relied on the possibility of using motor vehicle service?

A. That is largely correct.

Mr. Kunkel: If the Court please, I am a bit confused in [fol. 243] this case as to Mr. Dumbauld's objection and I think we ought to have it clear on the record in what capacity he is now appearing in this case. It seems rather strange to me that the defendant would be objecting to a defense. If he is appearing here in his capacity as the representative of the Antitrust Division and their policies, that is one thing, but if he is here representing the sovereign United States, then I think these questions are entirely out of order, that he has exhausted his function when he has admitted the allegations of the bill.

Judge Dobie: Do you have anything to say? We will consider all of that in weighing the testimony.

Mr. Dumbauld: I do not think it is necessary to go into that point, if Your Honors pleases. It is also brought up in the Seaboard brief but the answer is very simple and this is really quite irrelevant, in my opinion. Under the statute all suits to set aside orders of the Interstate Commerce Commission must be brought against the United States which is an indispensable party defendant and now certainly it would be a very unique thing if a party called upon to plead in the case did have the election whether to affirm or to deny or admit or deny and I think it is also very clear [fol. 244] that it is the duty of the attorneys representing the Government to be particularly solicitous of the public interest, including all the private parties; in other words, as in the Vierak case where it was pointed out that we should acquiesce in just claims as readily as we would resist

unfounded ones, so I think there is really nothing to all of this.

Judge Dobie: We will consider that.

Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, Mr. Beall questioned you as to five routes with respect to which you testified that the operation had either been suspended or had never been initiated. Will you explain to the Court why that situation prevailed?

A. Two of the routes, Gaston-Garnett and McBee-Sumter routes, were inaugurated very promptly after the original order. The Raleigh-Henderson, the Monroe-Rutherfordton and Hamlet-Wilmington were not inaugurated pending clarification of the prior and subsequent rail haul clause. When this was clarified by the orders of July 6, 1942, setting up the present key station provisions, we were then in the midst of the war. The Office of Defense Transportation had issued an order effective March 23, 1942, setting up a minimum of ten tons for l. c. l. carloading. Merchandise cars had to carry a minimum of ten tons. They issued [fol. 245] Defense Transportation Order No. 3, effective June 1, 1942, establishing certain restrictions on truck loading. That was followed by Office of Defense Transportation Order No. 17, effective August 1, 1942, relating to trucking miles. That order, while not applicable to the railroads, did inject or did establish a policy of the Office of Defense Transportation.

Q. What did that order require or request?

A. Curtailment of 25 per cent in trucking miles. In trying to maintain the minimum of 10 tons per car for l. c. l. loading and in complying with the maximum truck loading requirements, we had to reach some compromises as between the merchandise cars and the truck loads. In some instances we eliminated merchandise cars; in some instances we decided that it was to the best interest of the war transportation to eliminate trucking service. As to the lines that we had not established, we felt that we would be on very poor ground to undertake to establish new trucking service when the Office of Defense Transportation was asking us to curtail trucking service. So, working and trying to cooperate with the O. D. T. and the spirit and letter of their orders, we discontinued the trucking service

between Gaston and Garnett and the trucking service between McBee and Sumter and we did not establish these other three runs.

Q. Mr. Dumbauld asked you whether it was your state-
[fols. 246-259] ment that you had made certain changes in your transportation facilities as the result of the inauguration of your truck services and it is my recollection that you stated that there were certain things that had been done that would have been changed now had the truck services not been in operation and there were certain things that had not been done that would have been done. I take it you mean in the way of furnishing additional transportation facilities? Can we readily furnish those additional transportation facilities at the present time if these truck services are abolished?

A. We cannot readily do it, no.

Q. Why? Be as brief as you can.

A. Because of the manpower situation, the equipment situation, the shortage of cars, the shortage of locomotives and the shortage of manpower.

* * * * * * *

[fols. 260-364] Judge Dobie: I will say one thing for your brief; you will never be accused of handling the Interstate Commerce Commission with gloves.

Mr. Beall: I have great respect for the Interstate Commerce Commission. As a commission I think it is one of the best the country has ever had as individuals. As a commission I think they go wrong like everybody else does.

Judge Dobie: "Even the worthy Homer sometimes nods."

* * * * * * *

[fol. 365] IN DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 285

AMERICAN TRUCKING ASSOCIATIONS, INC., et al., Plaintiffs,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

J. Ninian Beall, Esq., S. W. Shelton, Esq., and Roland Rice, Esq., Counsel for Plaintiffs.

Edward Dumbauld, Esq., Special Asst. to Atty.-Gen. of U. S., and John V. Cogbill, Esq., Asst. U. S. Attorney, Counsel for the United States of America.

Daniel H. Kunkel, Esq., Counsel for Interstate Commerce Comm.

Thos. L. Preston, Esq., and Charles T. Abeles, Esq., Counsel for Receivers of Seaboard Air Line Ry. Co., Interveners.

OPINION—Filed July 17, 1944

DOBIE, *Circuit Judge:*

This is a civil action (28 U. S. C. A. §§ 41(28), 44, 45, 45(a), 46, 47, 48) in which we are asked to set aside certain orders of the Interstate Commerce Commission (hereinafter called the Commission) and to grant certain incidental relief. These orders of the Commission granted to Legh Powell, Jr., and Henry Anderson, Receivers of the Seaboard Air Line Railway Company (hereinafter collectively referred to as Seaboard) certificates of public convenience and necessity, authorizing Seaboard to engage in interstate operations as a motor carrier over 14 routes in the [fol. 366] States of Virginia, North Carolina, South Carolina, and Florida. Plaintiffs are the American Trucking Associations, Inc., (an organization formed in the interest of the highway trucking industry), and 6 motor carriers operating over the routes covered by the challenged certificates. Seaboard, by intervention, (28 U. S. C. A. §45(a)) has been joined as a party defendant.

The 14 applications of Seaboard for certificates, (with which we are concerned) were filed by Seaboard with the Commission (pursuant to the provisions of the Interstate Commerce Act, Part II, § 206, 49 U. S. C. A. § 306) at various times from February 23, 1937, to August 15, 1938. In due course, the Commission referred each application (severally and individually) to a Joint Board, composed of one member from each State in which there was any part of the operation covered by the specific application (49 U. S. C. A. § 305(a)).

The Joint Boards, after hearings on each of Seaboard's applications, issued reports, and appropriate certificates were, in every instance, granted by the Commission, subject to certain restrictions. One of these restrictions limited Seaboard's motor service to that which was strictly auxil-

iary to Seaboard's rail operations—that is, all transportation by motor was forbidden under the certificates unless there was a prior or subsequent shipment, in each instance, by rail. Seaboard, contending that this prior-or-subsequent-rail-haul restriction seriously impaired the value and utility of the certificates, petitioned the Commission for a rehearing. This was granted by the Commission and the case was re-opened only for oral argument on this condition. Then the Commission eliminated the compulsory-rail-haul condition from the certificates and substituted therefor a so-called "key-station-plan," which restricted Seaboard's motor service in connection with the designated [fol. 367] key-points. Later again Seaboard sought and obtained another rehearing, limited to modification of the key-points as these had been prescribed by the Commission. At this juncture, the Antitrust Division of the Department of Justice intervened, claiming that Seaboard's motor operations would bring about a monopoly and strangulation of the independent motor trucking industry. This stage of the proceedings marks also the initial appearance of the American Trucking Associations, Inc., one of the plaintiffs in the instant civil action. The Commission modified certain portions of the key-point restrictions.

We now proceed to consider the questions raised in this case which we deem are of sufficient merit to deserve discussion.

1. Constitution of Joint Boards—Consolidation of the Individual Applications

Plaintiffs vigorously attack the assignment of each application to a Joint Board, composed of one member from each State in which a motor service was sought in that application. This procedure satisfied the Motor Carrier Act, Part II, §205(a) and followed a well-established administrative practice. See United States v. American Trucking Associations, Inc., 310 U. S. 534. In the absence of fraud (which is discussed later), the Commission, in determining the constitution and membership of the Joint Board, has consistently followed the scope of the proposed operations as these operations are designated and described in the application. See Argo and Collier Truck Lines Common Carrier Application, 27 M. C. C. 563, 566; and Atlantic Coast Line Railroad Company Extension of

Operation, 30 M. C. C. 490, 491-2. Courts should give due weight to long continued administrative practice. See United States v. Moore, 95 U. S. 760; Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 315. The Commission [fol. 368] has often pointed out the inherent administrative difficulties in enforcing the Motor Carrier Act under any other interpretation. See 17 M. C. C. 413, 416-17. Even when minor defects in the composition of the Joint Boards do appear, the courts have been (and should be) slow to set aside an order of the Commission on this ground. Empire Trails, Inc. v. United States, 53 F. Supp. 373; North Coast Transportation Co. v. United States, 54 F. Supp. 448.

Section 205(a), Part II, of the Motor Carrier Act provides, in part:

> "The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three states, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three states, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, * * *. The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor carrier or brokerage operations involved in such matters are or are proposed to be conducted * * *. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon; * * *"

Early and late, before the Joint Boards and before the Commission, timely motions and petitions were filed, praying for a stay of the proceedings and for a consolidation of the several applications, so that these applications could be referred to, and considered by, "properly constituted"

Joint Boards, consisting of one member from each State in which an operation was desired under any of the applications. These motions and petitions for consideration were denied by the Joint Boards and the Commission.

[fol. 369] Plaintiffs contend that this action was arbitrary and capricious and forms a ground for the setting aside by us of the Commission's orders. We find no merit in this contention. Such motions to consolidate are addressed to the sound discretion of the Commission. And we can discern in this record no warrant to justify us in holding that here the Commission has either abused this discretion or acted arbitrarily and capriciously. From all the testimony before it, the Commission was in a peculiar position to judge accurately whether the service sought under totality of the applications was of such unified nature and such comprehensive scope as to call for consolidation of these applications and for their reference to a Joint Board which would be differently constituted. It is not without importance, in this connection, that, after these certificates were issued, some of the services thereunder authorized have never been inaugurated, while others, after being commenced by Seaboard, were subsequently abandoned.

2. Exclusion of Evidence—Fair Hearing

Protesting motor carriers next complain of the refusal of the Joint Board to receive and consider certain evidence offered by protestants. As a result, we are told: "Every effort of plaintiffs to have the proceedings conducted under any semblance of a fair, reasonable and statutory hearing was summarily rejected by the Commission."

This complaint of plaintiffs is cognate to the Commission's refusal to consolidate the several applications of Seaboard. This proferred evidence covered a wide field and much of it might have been relevant had the Commission consolidated the applications. This evidence seems to have been excluded by the Joint Boards on the ground that each Joint Board was necessarily limited to deciding upon, [fol. 370] and only upon, the particular application, or applications, before that Board.

Some evidence on the points which the protestants sought to develop did filter into the hearings before the

Joint Boards. The Commission had before it the reports of all the Joint Boards. When, therefore, the Commission decided against consolidation, against a reopening of the case and against a rehearing of the matters, with the applications considered together as a whole, we think this contention of plaintiffs falls to the ground. Then, too, it is open to very serious question whether this excluded evidence would have, if admitted, influenced the decisions of the Commission.

3. Use of Improper Criteria as to Public Convenience and Necessity

Very great stress is laid by plaintiffs on the contention that the Commission used false and improper criteria in arriving at its finding of public convenience and necessity in favor of Seaboard. It is urged upon us that the Commission substituted railroad economy and convenience for public necessity; that the Commission unduly favored Seaboard by characterizing the "hybrid" combination of rail and motor service as new and unique; and that the Commission utterly disregarded the clear fact that the territories in question were fully and completely served by existing motor carriers.

The simple answer to the first point is that the Commission did not base its finding of public convenience and necessity solely or even primarily upon railroad economy and convenience. That factor (quite properly, we think) was merely considered by the Commission as one (among many) elements that influenced its decision.

The second point is not to be answered as a question of juristic semantics—whether the co-ordinated rail and mo- [fol. 371] tor service is in every respect a "new" service. All that we need hold on this point is that the Commission could (as it did) consider that the proposed motor service contemplated in the applications of Seaboard was a co-ordinated rail-motor service and, on that account, differed rather widely from the application of a pure motor carrier (rendering exclusively motor service) and also from an application by a railroad for permission to inaugurate motor service in a territory and field quite separate and divorced from its rail operations. This appears to have been a well settled policy of the Commission. See Kansas City Southern Transport Co., Inc.—Common Carrier Applica-

tion, 10 M. C. C. 221, 235; Illinois Central Railroad Co.—Common Carrier Application, 12 M. C. C. 485, 495. Ample warrant for this, we think, can be found in many cases. We content ourselves with an extract from a very recent case decided by the United States Supreme Court.

Thus, in Thomson v. United States, 321 U. S. 19, 20-21, Mr. Justice Murphy said:

> "The motor trucks transport less than carload lots of freight in complete coordination with the rail service. The railroad instituted this additional method of transportation in order to furnish an improved and more convenient freight service to the public in certain areas of light traffic and in order to curtail car mileage and way-freight service. Motor vehicle transportation, in other words, is merely a new method of carrying on part of its all-rail freight business in which it had been engaged for many years."

The record does not support the contention that the Commission disregarded the ability of the independent motor carriers to furnish adequate service in the territories covered by Seaboard's applications. What the Commission did was to contrast this independent motor service with Seaboard's proposed coordinated motor-rail service, and then, in the light of this comparison, to weigh and appraise the elements and factors in each of the two types of [fol. 372] service. There is ample warrant in the record for the Commission's finding that, under proper criteria reasonably applied, public convenience and necessity would be best served by granting these certificates of public convenience and necessity to Seaboard.

4. Monopoly

The Commission found that the granting of these certificates to Seaboard would not create, or tend to create, a monopoly. And, further, the Commission stated: "Nor does it appear from the records made in these cases that there will be any great diversion of traffic from independent motor carriers." 17 M. C. C. 432. "Nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor carrier field." 34 M. C. C. 444. There is ample evidence to support these findings. And, as the Commission aptly stated: "One competitive

carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest." 28 M. C. C. 10. We call attention again (as against the contention that the Seaboard contemplated a unified service paralleling almost its entire line for the purpose of creating a monopoly) that some of the services authorized by the certificates have never been inaugurated, while others of these services, once inaugurated, have been subsequently abandoned.

It seems clear that the enforcement of the federal anti-trust laws is not a primary function of the Commission nor can any decision of the Commission preclude an action in the federal courts for the enforcement of these laws. This whole situation, involving the inter-relations of the Commission and the courts as to anti-trust legislation, is dis-[fol. 373] cussed at some length in the opinion of Mr. Justice Rutledge in McLean Trucking Co. v. United States, 321 U. S. 67.

5. Laches

Seaboard has interposed the defense of laches as a defense to this civil action. The basis of this defense is that plaintiffs have unduly delayed in bringing this action, that, in the interval between the granting of these certificates and the institution of this action, Seaboard has acquired equipment, spent money and made many changes in its transportation facilities.

It was understood between counsel that, at the hearing before us, the record before the Commission would not be introduced and that no oral evidence would be offered. Counsel for plaintiffs, however, insisted on introducing the Commission record, and no objection was made to this. Seaboard then claimed that it must offer some oral evidence on the changes in its facilities which had been made in the period between the granting of the certificates and the institution of the instant civil action. Counsel for plaintiffs and for the United States strongly objected to this evidence. One official of the Seaboard was permitted to testify and a motion to strike this evidence was made by counsel and taken under advisement by the Court.

We prefer to base our decision in this case upon the broader and more important considerations previously

discussed in this opinion. Accordingly, we do not feel called upon to pass upon either the validity of the defense of laches or the propriety of the oral evidence heard by this Court.

6. Fraud

Counsel for plaintiffs have interposed into this case a charge of fraud on the part of Seaboard. We are euphemistically told, though, that fraud here is used as a legal [fol. 374] concept and that any intention of charging any person connected with Seaboard with improper personal conduct is disclaimed. It is claimed, however: "The Commission exceeded its power and jurisdiction and acted arbitrarily and capriciously * * * In considering false and fictitious showings of convenience and necessity, deliberately fashioned by the applicant."

We might point out a slight inconsistency, in this connection, found in the complaint filed by plaintiffs. Thus, at one point in the complaint it is alleged: "The separate applications had the effect of concealing the true nature of the applications and of evading the statutory requirements for a hearing." While, in another place, the complaint states: "The extent and scope of the proposed operations were disclosed to the Commission through numerous applications."

The Commission took pains to state:

> "We now have the entire situation presented by the several applications before us in all of its aspects, following full and complete hearings." (17 M. C. C., 417.)

We content ourselves by observing that we find nothing whatever in this record either to warrant or to substantiate this charge, even in its euphemistic, legal connotation.

7. The Position of the United States in this Case

In every civil action to set aside an order of the Interstate Commerce Commission, the United States is, of course, a necessary party. When counsel for the United States appear and take part in the case, it is usually for the purpose of defending the order of the Commission, a coordinate branch of the federal government. In the instant case, however, counsel for the United States have confessed error, have admitted the allegations of the complaint and have asked this Court to grant the desired relief to plaintiffs.

[fol. 375] Seaboard's counsel tell us that the United States should not be heard in this anomalous role, which virtually amounts to stultification. See United States v. United States Gypsum Co., 53 F. Supp. 889.

We hold that the United States cannot confess error so as to make it binding upon us to grant the relief desired by plaintiffs. In McLean Trucking Co. v. United States, 321 U. S. 67, 69, error was confessed by the United States, yet the Supreme Court affirmed the decree of the three-judge District Court, refusing to set aside orders of the Commission. On the other hand, we were glad to consider the brief and oral argument of counsel for the United States, specially representing the Antitrust Division of the Department of Justice. The contentions advanced by these counsel we find to be lacking in substantial merit.

8. Separate Tariffs and Accounting for Motor Traffic

Plaintiffs complain that the Commission's order which failed to require Seaboard to file separate tariffs, and to keep separate accounts, for its motor traffic (apart from its rail operations) is a violation of the Interstate Commerce Act, Part II, §§ 217, 220, 49 U. S. C. A. §§ 317, 320, and constitutes unfair discrimination in favor of Seaboard and against plaintiffs.

These are matters primarily entrusted to the sound discretion of the Commission. See United States v. Trucking Co., 310 U. S. 344, 352; Board of Trade v. United States, 314 U. S. 534. And we should not here attempt to substitute our discretion (whatever action that may dictate) for the discretion vested in the Commission. It is conceded that this Court has no power to direct the Commission to issue an order directing Seaboard to file these separate tariffs and to keep these separate accounts. If, in actual [fol. 376] practice, it should develop that such discrimination is thereby effected, an ample administrative remedy is afforded in the shape of an application to the Commission. See Texas & Pacific Railway Co. v. Abilene Cotton Oil Co., 204 U. S. 426.

9. Reflections on the Interstate Commerce Commission

The printed brief of counsel for plaintiffs abounds in slurring remarks and exceedingly uncomplimentary references to the Commission. We quote a few of these. "To

escape this dilemma, they invented the doctrine of 'new service.'" "This hybrid monstrosity which is exclusively the brain child of the Interstate Commerce Commission * * *" "Truly the Commission's generosity to the railroads knows no bounds." "The Commission thinks it knows more about what is good for the country than Congress does. Therefore, the Commission has determined to handle the matter according to its own motions." "The Commission having decided to legislate in derogation of the will of Congress, it now goes through the fiction of a hearing and refuses to hear evidence." "The hearings which the Commission now holds on any railroad application for motor carrier rights are a farce. The matter has reached the point where no possible evidence could serve to show adequate existing services. No possible evidence could serve to overcome railroad desire and railroad convenience." "The 'hearings' are in effect, ex parte."

We find nothing in this record (or, for that matter, in the history of the Commission) that would justify such unrestrained language about an administrative body of rather unusual age and somewhat exceptional distinction. The language, we think, adds nothing to either the strength of the case of the plaintiffs or to the credit of their counsel.

[fol. 377] 10. Presumptive Validity of Commission's Orders

A long line of cases upholds the presumptive validity which attaches to the determination of an administrative tribunal, when the determination is subjected to review by the courts. See Rochester Telephone Corp. v. United States, 307 U. S. 125, 145; Helvering v. Clifford, 309 U. S. 331, 336; Gray v. Powell, 314 U. S. 302, 312; Federal Power Commission v. Hope Natural Gas Co., 320 U. S. 591, 602; Dobson v. Commissioner, 320 U. S. 489. These principles have been affirmed, and again applied to the Interstate Commerce Commission, by the Supreme Court in two very recent cases. Thus, in McLean Trucking Co. v. United States, 321 U. S. 67, 88, Mr. Justice Rutledge said:

> "If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order."

And Mr. Justice Jackson remarked in Hudson and Manhattan Railroad Co. v. United States (decided by the Supreme Court May 29, 1944):

> "It is not for the Court to set aside, without legislative command, its slow-wrought general principles which protect the finality and integrity of decisions of administrative tribunal."

For the reasons assigned, the prayer of the plaintiffs that we set aside the Commission's orders will be denied, judgment will be entered for the defendant, Interstate Commerce Commission, and the action of plaintiffs will be dismissed.

Action dismissed.

[fol. 378] In the District Court of the United States for the Eastern District of Virginia, at Richmond

American Trucking Associations, Inc., et al., Plaintiffs,

vs.

United States of America and Interstate Commerce Commission, Defendants

Dissenting Opinion

Paul, District Judge, dissenting:

I am unable to agree with the conclusions reached by my colleagues in this case. I am of opinion that the contentions of the protestant motor truck operators, in which they are joined by the United States, are well founded in the following respects:

1. That by the refusal of the Commission to hear and consider evidence which the plaintiffs offered and which was pertinent to the questions before the Commission, a full and fair hearing was denied and to that extent the action of the Commission was unreasonable and arbitrary.

2. That the action of the Commission was based upon a mistake as to, or a failure to apply, the proper statutory standards in its determination of "public necessity and convenience".

I

On the first of these questions, the procedure taken in the case is significant. I understand it to have been substantially as follows:

The applications made by the railroad were some fourteen in number each relating to a segment of its existing rail line. No one of the routes applied for extended into more than two states. But many of these segments adjoined and in the aggregate the applications paralleled a large portion of the rail line. References of the several applications were made to joint boards, each of which considered only the route named in the particular application before it and all of which refused to hear evidence touching the effect of the operations made possible through the aggregated applications.

[fol. 379] Upon the reports of the joint boards, the Commission granted the applications, subject to the condition (Condition 3) that shipments transported by the applicant's truck operators should be limited to those moving on a through bill of lading covering a prior or subsequent movement by rail. Upon petition of the railroad the Commission eliminated the condition requiring prior or subsequent rail haul and replaced it with a restriction whereby the motor transportation was limited by certain "key-points" on the railroad line. The railroad then petitioned for certain changes in the key-points as originally prescribed by the Commission. On a hearing on this latter petition all of the applications were consolidated, but the hearing was limited solely to the question of the modification of condition 3. At this hearing the Department of Justice sought to present evidence as to the effect of the railroad's motor truck operations with particular regard to conditions of competition. It later sought to have the case reopened and reheard for the same purpose. Both efforts were ineffectual. It appears that at an earlier stage of the proceedings the protesting motor carriers had sought to have all of the applications consolidated in order that the issue of public convenience and necessity might be considered from the standpoint of the unified route created by the aggregate of the several applications, on which the protestants desired to present testimony. This request for consolidation was refused. The Commission evidently approved each of the different applications on the strength

of the hearings and reports by the joint boards, where, in each instance the joint board had limited its consideration to the terms of the particular application before it and had refused to receive evidence touching the effect of the combined applications.

Whatever purpose the railroad had in putting its plans in the form of fourteen separate applications need not be considered. The fact is that when the various applications were filed, practically simultaneously, it was evident to the Commission that the plan contemplated various motor routes which operating together would cover a continuous [fol. 380] route paralleling a large part of the railroad. By the removal of condition 3, the motor service was opened to traffic having no prior or subsequent rail haul and it was made possible to transport shipments entirely by truck from a point of origin in one route to a destination on the line of a contiguous route. The result, so it seems to me, was to establish a service in direct competition with existing truck routes. The Commission, however, proceeded on a theory that each abbreviated route applied for stood alone and refused to consider evidence showing the relationship between them and the effect of their combined operation. It acted solely upon a theory and ignored the actual facts before it.

It would seem, therefore, that at no stage of this proceeding were the protesting motor carriers permitted to present the testimony which they deemed pertinent and essential on the issue of public convenience and necessity. This testimony bore upon the relationship among the various truncated routes for which the railroad had applied and upon the practical effect of the assembled operation. The Department of Justice was similarly denied an opportunity to present evidence as to the effect of these combined operations in unduly restraining competition. The effect of this latter denial is emphasized by the fact that the effect upon competitive conditions could not possibly be determined except by consideration of the operations as a whole and by the further fact that under the statute (Act of Sept. 16, 1940, 54 Stat. 906; 49 U. S. C. A. (2) (b)) the Commission is required to find that granting of the application will be to the public advantage and will not unduly restrain competition.

It is true that the Commission made a finding of public convenience and necessity, but such a finding is in any case

a conclusion supposedly based upon consideration of existing facts. I am not unmindful of the weight to be given to the findings of the Commission, but this presumes that such findings are the result of a full and fair hearing and consideration of all pertinent evidence offered bearing upon the [fol. 381] issue before the Commission; a hearing at which both sides have an opportunity to be heard. The statement in the majority opinion that the excluded evidence, even if admitted, would probably not have influenced the decision of the Commission, does not satisfy the situation. The protesting parties were entitled to be heard. I am not saying that the Commission reached an erroneous conclusion, nor that if the excluded testimony had been heard a different conclusion would have been reached. Perhaps the finding would have been the same. But in such case it would have been the result of the full and fair hearing which the law contemplates and which, in my opinion, the protestants have never yet had.

II

I am further of opinion that in finding that the public convenience and necessity would be served by approval of these applications, the Commission failed to apply the proper criteria for determination of that question.

Without discussing it in detail it appears to me that the record discloses that consideration of these applications was from the standpoint only of whether the Seaboard would thereby be able to handle its freight traffic in a manner more economical and convenient to it. The applications were made by the railroad in the belief that by the use of a motor truck service it could handle certain classes of traffic with greater convenience and economy and it was upon this basis that the certificates were granted. I do not take it that this satisfies the requirement that it is the public convenience and necessity which must be served.

Congress undoubtedly has recognized the existence of the various modes of transportation and sought to preserve the integrity and the advantages of each, without discriminations, preferences or advantages among them. A railroad has no authority, merely by the fact that it is a common carrier, to modify its method of carriage to that of a car- [fol. 382] rier by motor truck. When it seeks to do so no reason is seen why it is not subject to the same requirements as any other applicant for such privilege. In

such case the test is not whether the railroad can carry on its existing business with greater economy and efficiency by the changed method of operation, but whether there is a public need for the creation of the new service. It is argued by the applicant that the term "public convenience and necessity" is generic, leaving to the Commission the widest latitude for its definition in the unlimited variety of circumstances which it may face. Without disputing this general statement it is evident that the phrase comprehends, not the needs of the applicant, but the needs of the community, the public by whom and to whom freight is shipped, and which presumably is indifferent to the method of transportation so long as it has some method which is as adequate and convenient as any other.

That the Commission did not apply these standards is in effect admitted by it in its brief, where it is argued:

> "The fundamental error into which plaintiffs fall is the assumption that the service proposed by the railroad is a like and competitive service to that presently rendered by the truck operators along the route sought by the railroad, and consequently the application should have been governed by the same criteria as obtain where a new motor carrier seeks to invade a territory already occupied by existing motor carriers. In the latter instance questions of adequacy of existing service, the competitive effect of a new service, estimated traffic, and the ability of the communities served to support the new enterprise are pertinent issues upon which the evidence to be introduced by the plaintiffs might have had bearing. But these applications did not seek to establish a new and like transportation service; they sought merely authority to establish new methods of *operation* to provide a service equivalent to that which the railroad was already under a duty to render."

This is also an admission that the Commission did not consider the adequacy of existing service or the competitive effect of the new service in reaching its conclusions. It seems to me that this is exactly what the Commission should have considered in determining the question of public convenience and necessity.

It is evident that the two matters in which the Commission was in error are interrelated. It failed to apply the proper standards for determining the question of public [fol. 383] convenience and necessity and, therefore, refused to hear testimony bearing upon the standard which it had rejected. These errors were not in findings of fact, which we might properly refrain from reviewing. They were errors in the application of the law which, as I see it, require that the prayer of the complaint be granted. It is possible that upon a hearing applying the proper standards by which these applications should be judged and at which all pertinent evidence is considered the Commission would still be of opinion to approve them. But until this is done the orders granting the certificates should not be allowed to stand.

District Judge.

[fol. 384] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

Civil Action No. 285

AMERICAN TRUCKING ASSOCIATION, INCORPORATED, et al., Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION; and LEGH R. POWELL and HENRY W. ANDERSON, Receivers of the Seaboard Air Line Railway Company, Intervenor, Defendants

JUDGMENT—Filed July 21, 1944

This action having come on for hearing on June 1st, last, before a statutory Court composed of three judges, upon the pleadings filed herein, the arguments of counsel and briefs submitted herein, and the Court having maturely considered the same, and having filed its opinions herein on July 17th, 1944, it is

Ordered, Adjudged and Decreed that the prayer of the plaintiffs herein be, and the same is hereby denied; that the defendant, Interstate Commerce Commission, have

judgment against the plaintiffs, and that the above-styled action be, and the same is hereby, dismissed.

Armistead M. Dobie, United States Circuit Judge;
A. D. Barksdale, United States District Judge.

I dissent to the entry of the foregoing judgment.

John Paul, United States District Judge.

July 21st, 1944.

[File endorsement omitted.]

[fols. 385-386] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed August 18, 1944

To the United States of America, the Interstate Commerce Commission, Legh R. Powell, Jr. and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company, or Their Counsel:

Please take notice that pursuant to the statutes and rules of Court in such case made and provided, the American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K. & L. Transportation Company, Inc., and St. Johns River Line Company, plaintiffs in the above-entitled cause, have appealed and do hereby appeal to the Supreme Court of the United States, from the final decree of the above-entitled Court made herein and entered on the 21st day of July, 1944, and from each and every part thereof.

Dated August 12, 1944.

J. Ninian Beall, Roland Rice, Samuel W. Shelton,
Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 387] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed August 18, 1944

The American Trucking Associations, Inc., Flamingo Truck Lines, Inc., Hunt Truck Lines, Great Southern Trucking Co., Central Truck Lines, Inc., K. & L. Transportation Company, Inc., and St. Johns River Line Company, being aggrieved by the final order or decree of the above-entitled Court hereinbefore made and entered on the 21st day of July, 1944, in the above-entitled cause, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the Assignment of Errors filed herewith and to which reference is hereby made.

They pray that citation be issued as provided by law and that a transcript of the record, proceedings, and documents on which the final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Dated August 16, 1944.

J. Ninian Beall, Investment Building, Washington, D. C.; Samuel W. Shelton, Tenth Street Building, Richmond, Va., Attorneys for Appellants.

Roland Rice, 1424 16th Street, N. W., Washington, D. C.; Brashears, Beall & Beasley, Investment Building, Washington, D. C., Of Counsel.

[File endorsement omitted.]

[fols. 388-389] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 18, 1944

The plaintiffs in the above-entitled case, having prayed for the allowance of an appeal in the above-entitled cause to the Supreme Court of the United States from the decree made and entered in the above-entitled cause by the above-entitled Court, on the 21st day of July, 1944, and from each

and every part thereof, and having presented and filed their Assignment of Errors and statement as to jurisdiction, pursuant to the statutes and rules of Court in such case made and provided:

It Is Ordered and Decreed that the appeal be, and the same is hereby allowed as prayed, and made returnable within forty (40) days from the date thereof, and the Clerk is directed to transmit to the Supreme Court of the United States a proper authenticated transcript of record, proceedings, and papers on which the decree was made and entered.

And It Is Further Ordered that security for costs on appeal be fixed in the sum of Five hundred Dollars, ($500).

Dated August 18, 1944.

Armistead M. Dobie, United States Circuit Judge.

[File endorsement omitted.]

[fol. 390] In United States District Court

[Title omitted]

Order Allowing Enlargement of Time to Submit Stipulation with Respect to Portion of Record Before the Interstate Commerce Commission to Be Used on Appeal —Filed August 18, 1944.

Good cause appearing therefor, it is hereby ordered that the Petitioners in the above-entitled suit may have, and they are hereby allowed, to and including September 15, 1944, within which to prepare and lodge in the Clerk's office of this Court a statement of the evidence and file with said Clerk a praecipe in accordance with Equity Rule 75 upon appeal from the decree of the above-named Court made and entered herein on the 21st day of July, 1944, and to docket the said appeal and file the record therein with the Clerk of the Supreme Court of the United States.

Dated August 18, 1944.

Armistead M. Dobie, United States Circuit Judge.

[File endorsement omitted.]

[fol. 391] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed August 18, 1944

Come now the American Trucking Associations, Inc., and, in connection with their petition for appeal, submit the following Assignment of Errors committed by the majority of the learned District Court of the United States for the Eastern District of Virginia, in the course of the proceedings and in and by the decision filed July 17, 1944, and the terms of final decree passed and entered on the 21st day of July, 1944, in the above-entitled cause:

1. The said District Court erred in that it decreed the petition of petitioners, American Trucking Associations, Inc., et al., to be denied and dismissed and that the Interstate Commerce Commission have judgment against the plaintiff, notwithstanding that as specifically averred in said complaint, and firmly established by the proof, the orders of the Interstate Commerce Commission, as set forth in Paragraph 4 of the complaint and the exhibits therein referred to, then and now complained of were and are illegal and should be held to be void, because: The said Commission misconceived its statutory duty in that:

(a) The reports and orders of the Commission conclusively show that contrary to law, the Commission issued motor carrier certificates to the Seaboard Railway on the assumption that it had statutory authority and jurisdiction to recognize and certificate a hybrid type of carrier consisting of a combination of rail and motor service.

[fol. 392] (b) The reports and orders of the Commission show that it regarded the applications for certificates of convenience and necessity to conduct hybrid operations (part rail and part motor) as being matters not controlled by the usual legal criteria for public convenience and necessity under Sections 206(b) and 207 of Part II, and the Commission further concluded, contrary to law, that such operations could be exempted from other provisions of Part II, i. e., Section 216, covering tariffs, and Section 220,

covering accounting, and accordingly so exempted such operations.

(c) The reports and orders of the Commission show that, contrary to law, the Commission failed and refused to provide nondiscriminatory provisions in certificates (Sec. 208) and to give force and effect to the provisions of the National Transportation Policy, with particular reference to the requirements for fair and impartial regulation of, and the preservation of the inherent advantages of, each type of transportation committed to its jurisdiction.

2. The said District Court erred in holding that the Commission had received evidence and applied proper legal criteria in determining public convenience and necessity under Section 206(b), in that:

(a) The reports and orders of the Commission conclusively show, and the Commission on brief admitted, that it did not apply in these railroad cases the normal criteria which it had applied in other motor carrier cases where independent motor carriers were applicants, but applied a different "policy" of its own determination where railroads and railroad owned motor carriers are applicants for motor carrier rights.

(b) The reports and orders of the Commission show that normal criteria for the determination of public convenience and necessity was either disregarded, or subordinated to the point of exclusion, and that the Commission substituted in lieu thereof, a policy based on determination of railroad convenience.

(c) The reports and orders of the Commission show that the Commission deemed it immaterial and therefore disregarded the willingness and ability of the independent motor carriers to furnish adequate service in the territories covered by railroad applications and to coordinate their services with those of railroads, whereas, the Court found that the Commission did consider the service ren- [fol. 393] dered by independent motor carriers in connection with its determination of public convenience and necessity.

(d) The Commission denied appellants a fair and reasonable hearing in that it failed and refused to receive

and consider evidence pertinent to the issue of public convenience and necessity and denied itself a record from which the required statutory findings might be made.

(e) The said District Court misconceived the distinction between railroad applications under the "grandfather" clause of Sections 206(a) and the proof there required, being proof of past services only, as opposed to applications under Sections 206(b) and 207 of Part II, requiring proof of present and future public convenience and necessity.

3. The said District Court erred in concluding that the Commission had given proper consideration to and made the requisite statutory findings in connection with restraint of competition under Section 5 of Part I, in that:

(a) The Court misconceived the issue presented and assumed that plaintiffs were directly seeking to have the Commission administer the Anti-Trust Laws, whereas, the complaint (Paragraph 5(b)) specifically put in issue the statutory findings required by old Section 213(a)(1) of the Motor Carrier Act (Part II of the Interstate Commerce Act) and New Section 5(a)(b) of Part I of the Interstate Commerce Act, and in connection therewith:

(b) In denying plaintiffs' contentions that the Commission had refused to receive evidence and failed to make the required statutory findings, the Court quoted several conclusions, from the reports of the Commission, in support of the view taken by the Court, and seemingly overlooked the fact that the cited conclusions of the Commission are among the conclusions which plaintiffs charged were unsupported by the evidence.

(c) The Court found, "there is ample evidence to support these findings", however, plaintiffs contended that there was no evidence to support the conclusions of the Commission and the Court did not refer to any evidence in support of the conclusions of either the Commission or the Court, nor was there any evidence from which the Court or the Commission might have reached their respective conclusions.

[fol. 394] 4. The said District Court erred with respect to the provisions of Section 205(a) of Part II, as follows:

(a) In holding that the Commission had power and jurisdiction to assign the several applications, filed by the receivers of the Seaboard Air Line Railway Company, for separate hearings before several separate Joint Boards.

(b) In holding that the assignment of such separate applications for separate hearing before separate Joint Boards was a well established administrative practice.

(c) In holding that plaintiffs' timely and repeated objections and exceptions to the separate Joint Board proceedings were addressed to the sound discretion of the Commission as opposed to plaintiffs' contentions that said exceptions were grounded on mandatory statutory requirements.

5. The said District Court erred in holding that the Commission had accorded plaintiffs full, fair and reasonable hearings under Secs. 205(a)(e), 206, and 207 of Part II and Sec. 217 of Part I, and that plaintiffs were not injured by the exclusion of evidence, in that:

(a) The said District Court was inconsistent and in error in finding that "much of it (excluded evidence) might have been relevant had the Commission consolidated the application", and then concluding that plaintiffs had been accorded full, fair and reasonable hearings, despite the fact that the Court also found that the Commission failed and refused to either consolidate the hearings or receive the evidence.

(b) The said District Court was inconsistent and in error in finding, on the one hand, that "each Joint Board was necessarily limited to deciding upon, and only upon, the particular application, or applications, before that Board", and then, on the other hand, concluding that the Commission, by giving consideration to an aggregate of records of hearings, which were individually deficient, thereby cured the errors which were inherent in the individual records.

(c) The said District Court was inconsistent and in error in finding, "Then, too, it is open to very serious question whether this excluded evidence would have, if admitted,

influenced the decisions of the Commission", and then pro-
[fol. 395] ceeding, as the Court did, to resolve this "serious question" in favor of the Commission and against these plaintiffs.

6. The said District Court erred in assuming that the doctrine with respect to the "presumptive validity which attaches to the determination of an administrative tribunal", is applicable in this case, in that:

(a) The decisions dealing with the issue are not dogmatic in the sense that they may be lifted from their factual setting and transplanted.

(b) The issues involving error on the part of the Commission which were presented to the Court, involved errors of law, in connection with statutory construction, as distinguished from matters of discretion which are committed to administrative determination or expert judgment.

(c) The challenged course of procedure and policy, as now applied by the Commission was placed in issue before the Court, promptly upon the conclusion and exhaustion of administrative remedies.

(d) The Court found, with respect to the Commission's policy in connection with railroad applicants, "this appears to have been a well settled policy of the Commission", whereas the "policy" was one of the precise issues presented to the Court for review and therefore may not be, in and of itself, cited as justification or authority.

7. The said District Court erred in suggesting that plaintiffs questioned the administrative integrity of the Commission, in that:

(a) The abbreviated quotations cited in the opinion of the Court were lifted from their context in the brief and in the form presented, and in a setting of omissions, are misleading.

(b) The brief referred to contained and prominently presented clear and unequivocal expressions of plaintiffs "*respect*", and "*esteem*" for the Commission and that any terms used in the brief, were "*confined to their legal concept*".

(c) Those assurances were, in substance, repeated on oral argument and laid a premise widely at variance from inferences which might be drawn from the quotations contained in the opinion.

[fol. 396-407] (d) The conclusions were based on substantial matters of record and were therefore fair legal comment.

Dated August 15, 1944.

J. Ninian Beall, Investment Building, Washington, D. C.; Roland Rice, 1424 16th Street, N. W., Washington, D. C.; Samuel W. Shelton, Tenth Street Building, Richmond, Va., Attorneys for Plaintiffs.

Brashears, Beall & Beasley, Investment Building, Washington, D. C., Of Counsel.

[fol. 408-409] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

AMERICAN TRUCKING ASSOCIATIONS, INC., et al., Plaintiffs,

vs.

UNITED STATES and INTERSTATE COMMERCE COMMISSION, Defendants

Civil Action No. 285

BRIEF FOR PLAINTIFFS

"6

"We believe that the Commission has grossly exceeded statutory bounds and disregarded the will of Congress.

"We undertake the burden of proving our case along these lines.

"Before proceeding further, we disclaim any intention or purpose to charge any person connected with either the Interstate Commerce Commission or the intervenor, Seaboard Air Line Railway, with any improper personal conduct. We have the greatest respect for all parties concerned and involved. The use of such sharp and pointed

terms as 'arbitrary and capricious,' 'railroad mindedness,' 'fraud,' and wilful' is confined to their legal concept.

"Within those sincere expressions of personal esteem, we present our argument."

[fol. 410] Citation in usual form, filed August 19, 1944, omitted in printing.

[fol. 411] In United States District Court

Brief for Interstate Commerce Commission, Pages 28-34

"28

"III

"The Commission Having Determined That the Several Applications Did Not Contemplate a Single Integrated Motor Truck Service, Its Rejection of Plaintiff's Motion to Consolidate and of Its Proffered Evidence Was Not Error

"The complaint charges the Commission with error in its refusal to permit the protestants and intervenors to introduce evidence or require applicant to produce evidence with respect to enumerated items set out on pages 16 and 17 of the complaint. As a result of this action, it is claimed, the Commission acted without substantial evidence and was disabled from making necessary finding required by the statute.

"The fundamental error into which plaintiffs fall is the assumption that the service proposed by the railroad is a like and competitive service to that presently rendered by the truck operators along the route sought by the railroad, and consequently the application should have been governed by the same criteria as obtain where a new motor carrier seeks to invade a territory already occupied by existing motor carriers. In the latter instance questions of adequacy of existing service the competitive effect of a new service, estimated traffic, and the ability of the communities served to support the new enterprise are pertinent issues upon which the evidence to be introduced by the plaintiffs might have had bearing. But these applications did not seek to establish a new and like transportation serv-

ice; they sought merely authority to establish new methods of *operation* to provide a service equivalent to that which the railroad was already under a duty to render. The several applications state (Appendix to complaint, p. 6):

> [fol. 412] " 'The rail lines in territory sought to be served are the only transportation facility which can render a coordinated rail and highway service as proposed between points located on the railroads involved. Such motor carrier service, as authorized, will (a) expedite the movement of freight, and (b) reduce the cost of rail operation to the extent that it is now necessary to operate train for the handling of small quantities of less-than-carload freight.'

"The record taken at the several hearings showed that the proposed service had for its objective the improvement in the handling of less-than-carload freight moving largely between small stations intermediate to important terminals and necessarily carried in local trains. The Commission found (17 M. C. C. 413, 417-418):

> " 'The proposed routes parallel the lines of the railway, and applicants propose to substitute truck service for the existing less-than-carload freight service of the railway between stations on its lines . . .'
>
> " 'The proposed schedules are to be so coordinated with applicants' regular train service from important origins as to expedite delivery by as much as 36 hours in some instances. The bulk of the less-than-carload movement is to and from small points intermediate to larger terminals and is now carried in local trains. . . .'
>
> " 'Applicants expect to continue to utilize rail transportation for most of the line-haul between the points served by them, but less-than-carload shipments are to be transferred to trucks at stations near the final destination of the shipments. By relieving local trains from the handling of such shipments except to and from points where cars are set out, applicants expect to expedite local train schedules and speed up the handling of carload traffic. . . .'

"In approving the applications the Commission recognized a peculiar type of service sought to be performed, a service having neither the characteristics of rail service

alone nor of motor vehicle service alone. Accordingly, it premised its ultimate conclusion upon factors of public convenience and necessity which it found to justify its approval of the applications. Particularly did it find that the question of competition with local truckers was not a substantial issue when it stated (p. 432):

> "'There seems little question as to the proposed rail-truck coordinated service being in the public interest, nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers. However, the only need shown of record is for service [fol. 413] which is strictly supplemental of, or auxiliary to, and coordinated with applicants' rail service, and the certificate granted herein will be limited accordingly.'

"From this aspect of the scope of the applications there is no merit to the contention that the finding of public convenience and necessity was only possible because the Commission denied a consolidated hearing and refused to hear evidence which protestant sought to incorporate in the record. Such evidence was pertinent to a situation which was not present in these cases.

"The Commission's report in 28 M. C. C. 5 was predicated upon the special type of service that was proposed and that the test of public convenience and necessity in such case was not to be met by a showing that there was not adequate independent motor carrier service between all stations. Thus the report states (p. 10):

> "'* * * The thought of Division 5 in regard to this matter was that public convenience and necessity required a coordinated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor carrier service under railroad control which is not coordinated with prior or subsequent rail service.'

"Under these circumstances the Commission found that public convenience and necessity lay in the reduction in cost and increase in efficiency of transportation service This is not, as plaintiffs claim, a consideration of railroad convenience and necessity since these results inure to the benefit of the general public.' '

[fols. 414-426] "Prior to the enactment of the Motor Carrier Act, 1935, the Commission described this type of motor carriers operations in *Coordination of Motor Transportation*, 182 I. C. C. 263, 336, as follows:

> "'(a) *Substitution of trucks for way trains and terminal switching.*—It is generally recognized that peddler or way-freight operations, as to many points, consume much more time than do trucking movements and that they are costly because of the number of transfers required and the light loading of cars. In many instances the roundabout character of railroad lines adds to the difficulty. With increased highway competition, these drawbacks have become more and more serious. For several years, therefore, a number of railroads have been substituting truck for rail movements of less-than-carload traffic from designated transfer points including some points specifically set up for the purpose of concentrating freight by rail for truck delivery to outlying stations. In the reverse direction the trucks collect freight for concentration at such transfer points. The distances covered are commonly 15 to 20 miles in

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' ' ' ' ' ' ' The term "public interest" as thus used (Transportation Act, 1920) is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the power conferred.' *New York Central Securities Co. v. U. S.*, 287 U. S. 12, 25. 'It is a primary aim of that policy (embodied in the Transportation Act, 1920, and the Emergency Railway Transportation Act, 1933) to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public.' *Texas v. United States*, 292 U. S. 522, 530.

either direction from the concentrating point. Regular rail rates apply and store-door service is not furnished, but frequently the substitution of truck for rail movement is not shown in the tariff. The time of way-freight trains, which commonly carry a crew of five or six men, is thereby considerably reduced or the length of runs increased, deliveries are frequently made one to two days earlier, a more flexible service is made available, and the number of lightly loaded cars is reduced. By taking care of traffic requiring expedited movement, it it further possible in some cases to reduce train service on unimportant lines from a daily basis to a 2-day basis, and in other cases, by eliminating less-than-carload movements, through trains have been able to take over the carload movement of way trains, eliminating the latter. The requirements of carload traffic and the divergence of highways from the routes of rail lines render it impossible to abandon all local freight-train service.' "

[fol. 427] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF LEGH R. POWELL, JR., AND HENRY W. ANDERSON, RECEIVERS OF THE PROPERTIES OF SEABOARD AIR LINE RAILWAY COMPANY, INTERVENING DEFENDANTS, FOR ENLARGEMENT OF TIME FOR FILING DESIGNATION OF ADDITIONAL PARTS OF THE RECORD—Filed August 22, 1944.

Come now Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants, and pursuant to paragraph 2 of Rule 10 of the Rules of the Supreme Court move the Court to extend to September 25, 1944, the time for filing a designation of additional portions of the record to be transmitted to the Supreme Court on the appeal of this cause. In support of their motion they show to the Court;

1. That the Appellants have filed a designation of the parts of the record to be included in the transcript to be

transmitted to the Supreme Court subject to an extension of time, granted by the Court, to September 15, 1944, within which to prepare and lodge in the Clerk's Office of this Court a statement of the evidence and a praecipe in accordance with Equity Rule 75.

2. That the Intervening Defendants have concurrently herewith filed a motion that this Court direct the Clerk to omit from the record so to be transmitted certain matters included in said designation by Appellants.

3. That Counsel for the Intervening Defendants have been advised by Counsel for Appellants that he will desire a hearing on said motion.

[fols. 428-430] 4. That until these matters are disposed of Intervening Defendants will not be definitely informed as to the portions of the record which will be designated by Appellants for inclusion in the transcript on appeal and will accordingly be unable to determine what additional portions of the record they will desire to be included in the transcript.

Respectfully submitted, W. R. C. Cocke, Thomas L. Preston, Chas. F. Abels, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants.

[fols. 431-434] In United States District Court

[Title omitted]

Order Enlarging the Time for Filing Designation of Additional Portions of the Record by Intervening Defendants—Filed August 22, 1944.

Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants, having moved for an enlargement of the time for designating additional portions of the record to be transmitted to the Supreme Court on the appeal of this cause, and good cause therefor appearing, it is hereby

Ordered that the time within which said Intervening Defendants may file a designation of additional portions of the record to be included in the transcript to be transmitted to

the Supreme Court is extended to and including September 25, 1944.

Dated August 22, 1944.

Armistead M. Dobie, United States Circuit Judge.

[File endorsement omitted.]

[fol. 435] Citation in usual form showing service on W. P. Bartel, et al., filed August 29, 1944.

[fol. 436] IN UNITED STATES DISTRICT COURT

CLERK'S MEMORANDUM

APPEAL BOND—Filed September 15, 1944

Dated: September 11th, 1944.

Penalty: Five Hundred Dollars ($500.00).

Obligors: American Trucking Associations, Inc., et al., as principals, and Eagle Indemnity Company, of New York, N. Y., as Surety.

Conditioned to pay all costs, or such costs as the appellate Court may award.

[fol. 437] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE DESIGNATING ADDITIONAL PARTS OF THE RECORD TO BE INCORPORATED IN THE TRANSCRIPT—Filed Sept. 19, 1944

To the Clerk of the above named court:

You are hereby requested to include in the transcript to be transmitted to the Supreme Court of the United States on the appeal of this cause, in addition to the portions of the record designated by Appellants, the following:

1. Appellants' Designation of Record.

2. Order of the Court dated August 22, 1944, enlarging the time for filing a designation of additional parts of the record by Intervening Defendants.

3. Testimony of R. W. Rogers beginning on page 19 and ending on page 35 of the transcript of the proceedings before the Court on June 1, 1944.

4. The following portions of the Brief for Plaintiffs, dated at Washington, D. C., May 22, 1944, relevant to Assignment of Error No. 7 and Items 18 and 19 of Appellants' designation:

(a) From and including the heading on page 12 to the bottom of page 14, reading as follows:

"Fictions Indulged in

"In an effort to bolster its weak legal position, the Com-[fol. 438] mission has indulged in a number of sheer fictions.

"Realizing that there was no proof of public convenience and necessity in the ordinary sense to support more motor carrier operations, the Commission asserts that the service authorized is 'something new'—'something different'—'a service different from either rail or motor carrier'—etc., etc. Presumably, the theory which motivated the Commission in seeking refuge in this 'new' service is grounded in the knowledge that there already exists an abundance of motor carrier service, rail service, express service and forwarder service, and by no stretch of the imagination could convenience be established for any more of either one of those services. To escape this dilemma, they invented the doctrine of 'new service.'

"This new service involves the use of motor vehicles and motor carrier certificates of convenience and necessity. Certificates for this new service are not issued on a showing of public convenience and necessity, but are issued on a showing of railroad convenience and alleged improvement to railroad service. The operations are to be conducted by motor vehicles with railroad tariffs. No separate accounting for either expenses or revenue are involved. That is all to be scrambled with the railroad operations. The service is not to be based on cost of rendering motor carrier service, but is to be based on alleged savings in railroad operations. There is to be no means of testing the reasonableness of the rates or the reasonableness of the competitive practices, because there will be nothing to compare them with.

"It is new and different beyond a doubt. It is so new and so different, so novel and so revolutionary, that the Commission didn't tell Congress about it. Congress made no provision in either the Rail Act or the Motor Carrier Act, or any other act, for this hybrid monstrosity, which is exclusively the brain child of the Interstate Commerce Commission.

"The next fiction indulged in, is that this new hybrid operation will not represent new competition, because it will only serve points already served by the railroads. Truly, the Commission's generosity to the railroads knows no bounds. Between ninety and ninety-five percent of the population of the United States have some kind of railroad service. That much of the business in the United States is set aside by the Commission as 'belonging' to the railroads, and presumably the balance, wherever they may find it, belongs to the trucks and the water carriers. Then the Commission says that these points served by the railroads have always been served by the railroads, and that the railroads are under an obligation to continue serving such points. Therefore, all of that traffic is railroad traffic, and, if the railroads keep it, get it, or recapture it, that is not competitive, because it was already railroad traffic.

"The Commission proceeds on the theory that the ten to twenty percent of the national ton miles of the total traffic which the trucks are handling must have been stolen from the railroads, because it originated at points served by the railroads. Therefore, it is perfectly proper for the Commission to issue the railroads any kind of a certificate, so long as it enables the railroads to get all of the traffic at all of the points served by all railroads, regardless of the fact that such a theory means the annihilation of the motor carrier industry. That would have been the kind of a law which the Commission would have liked to see Congress [fol. 439] enact, but Congress rejected that theory, and directed the Commission to regulate the motor carrier industry as a separate and distinct transportation agency.

"The Commission thinks it knows more about what is good for the country than Congress does. Therefore, the Commission has determined to handle the matter according to its own notions. This is the setting in which the Commission regulates the motor carrier industry and grants certificates of convenience and necessity for motor

carrier rights to railroads. Therein lies the reason for the failure of the Commission to adopt proper legal criteria in passing on issues involving public convenience and necessity when railroads apply for motor carrier rights. The Commission has not exercised its administrative discretion within the frame work of the law which it administers. That is why these plaintiffs are seeking the aid of the Court to set the Commission's orders aside."

(b) The first paragraph beginning on page 18 and the first sentence of the second paragraph beginning on that page, reading as follows:

"Here, plaintiffs contend that the Commission not only failed and refused to make the basic or essential findings required to support its order, but also failed and refused to conduct a proper hearing and failed and refused to hear and receive evidence essential to the making of proper findings. The Commission, in these cases, has now gone so far as to substitute its predetermined conclusions for the requirements for a legal hearing.

"The Commission having decided to 'legislate' in derogation of the will of Congress, it now goes through the fiction of a hearing and refuses to hear evidence."

(c) The first paragraph beginning on page 19, reading as follows:

"The hearings which the Commission now holds on any railroad application for motor carrier rights are a farce. The matter has reached the point where no possible evidence could serve to show adequate existing services. No possible evidence could serve to overcome railroad desire and railroad convenience. That is not the law!"

(d) The last sentence on page 19, reading as follows:

"The 'hearings' are in effect; ex parte."

(e) The first paragraph beginning on page 68 and the first sentence of the next succeeding paragraph, reading as follows:

"The pretensions that certificates were issued for the purpose of improved railroad service has been unmasked. The Commission issues motor carrier certificates to railroads because railroads ask for them, and does so in total

disregard of the issues of public convenience and necessity. *Is it not now clear why these plaintiffs are in Court?*

[fol. 440] "The next pretense to be unmasked is that of imposing conditions to prevent the railroads from monopolizing motor carrier transportation."

(f) The carry-over paragraph beginning on page 73 and ending on page 74, reading as follows:

"The foregoing case is an excellent example of the singlemindedness with which the Commission disposes of these issues. Of course the Commission was 'whistling in the dark' and endeavoring to bolster a bad position when it said that the railroad was already handling the traffic in question. If they are already handling the traffic, the public must be satisfied. After the Commission abolished the requirement for prior or subsequent movement by rail there could be no such thing as purely railroad traffic. Traffic that moves by truck is truck traffic and if it is not moved by railroad at all, it cannot possibly be railroad traffic. There appears to be no limit to what the Commission will say and do in order to bolster these illegal orders."

(g) Paragraph 5, on page 103, reading as follows:

"5. That in applications by railroads the Commission has established a preconceived policy of issuing certificates to railroads regardless of the facts and has made a farce of the so-called hearings on convenience and necessity."

(h) The first four sentences on page 105, reading as follows:

"The Commission had evidently concluded that no matter how weak the railroad's showing might be or how strong a showing the independent motor carriers might make, such evidence could have no influence on the Commission's decision. They have determined to give railroads certificates for the asking. The law contemplates a hearing and proof.

"As far as the Commission is concerned, all of the proceedings might just as well have been *ex parte* and disposed of by the mere filing of the applications by the railroads."

(i) The second full paragraph on page 108, reading as follows:

"The Commission cannot perform its statutory duty by shutting its eyes. The Commission must hear and consider all of the evidence. The Commission has not conducted a fair, reasonable and statutory hearing and it deliberately employed the device of piece-meal hearings which denied protestants a reasonable hearing."

(j) The carry-over paragraph beginning on page 119 and ending on page 120, reading as follows:

"We suggest that it is clear that this railroad applicant, deliberately sought to evade the requirements for a hearing in which all of the related evidence could be introduced. [fol. 441] The device invented for the purpose of accomplishing that purpose, was to split its application of February 23, 1937 into a large number of subs. Had the Commission been interested in following statutory requirements and in conducting a fair hearing it could not have been so naive as to be fooled by such a patent fraud."

(k) The second and third full paragraphs on page 126, reading as follows:

"The Commission now determines that no evidence can possibly defeat a railroad applicant for motor carrier service.

"In a legal sense, hearings have been abolished and certificates are issued to railroads as a matter of right."

(l) The last paragraph on page 134, reading as follows:

"The Commission appears to regard itself as something separate and apart from the will of Congress, either with respect to the national transportation policy, the Antitrust Laws, or the opinions of the Courts. We suggest it is high time that the Commission be reminded of the fact that they are nothing but an administrative agency existing for the sole purpose of carrying out the intent of Congress. The Commission should now be impressed with the proposition that the Courts will strike down their high-handed usurpation of authority."

(m) The first paragraph following the heading on page 141, reading as follows:

"The railroad mindedness of the Commission and its utter contempt for the will of Congress has had its repercussions in the Congressional debates."

(n) The last full paragraph on page 146, reading as follows:

"We are on sound ground when we charge the Interstate Commerce Commission with willful disregard of its statutory duties and the intent of Congress."

(o) The second and third full paragraphs on page 173, reading as follows:

"The railroad program seems to have the blessings of the Commission. The Commission simply has long had a preconceived notion that there should be a transportation monopoly, built around the railroads. It has been unable to reconcile itself to the proposition that Congress repudiated its views on that subject. The Commission has set itself up as a supermaker of transportation policy which it conceives to be superior to that which Congress fashioned.

"The Commission hopes for immunity in its self-appointed role by screaming to the Courts that any 'review' would be an intrusion on its 'administrative prerogatives.'"

[fols. 442-443] 5. A copy of the majority and dissenting opinions filed in this cause on July 17, 1944, appellants having failed to append to their Statement as to Jurisdiction a copy of said opinions as required by Rule 12 of the Rules of the Supreme Court.

6. This praecipe, and proof of service.

W. R. C. Cocke, Thomas L. Preston, Chas. T. Abeles, Attorneys for Legh R. Powell, Jr., and Henry W. Anderson, Receivers of the Properties of Seaboard Air Line Railway Company, Intervening Defendants.

[fols. 444-445] In United States District Court

[Title omitted]

Order Extending Time—Filed Sept. 25, 1944

For reasons appearing sufficient to the court,

It is Ordered that the time within which the record in this case may be prepared and filed in the Supreme Court of the United States is hereby extended for a period of ten days from and after September 27, 1944.

John Paul, United States District Judge, Sitting by Designation.

[File endorsement omitted.]

[fols. 446-449] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 450] Before the Interstate Commerce Commission

Docket No. MC 86687
Sub. No. 3

Application of Legh R. Powell, Jr., and Henry W. Anderson, Receivers of Seaboard Air Line Railway.

Columbia, South Carolina, June 11, 1937. 9 A. M.

Before: Joint Board No. 2 (J. C. Darby, South Carolina Public Service Commission, Chairman; R. O. Self, North Carolina Utilities Commission).

Also Present: Examiner W. W. McCaslin.

Met pursuant to notice.

Appearances:

Chas. T. Abeles, 319 Seaboard Air Line Railway Building, Norfolk, Virginia, appearing for Applicants.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, appearing for Southern Motor Carriers' Rate Conference, Intervener.

Wm. T. Callahan, 31 Hasell Street, Columbia, South Carolina, appearing for Brotherhood of Railroad Trainmen.

[fols. 451-452] Proceedings

Chairman Darby: The Interstate Commerce Commission has set for hearing at this time and place the application of the Receivers of Seaboard Air Line Railway for a certificate of public convenience and necessity authorizing a new operation as a common carrier of commodities generally, by motor vehicle, in the transportation of commodities generally, in interstate commerce, between Hamlet, North Carolina, and Columbia, South Carolina. This hearing is set and will be heard by Joint Board No. 2. The docket number of the proceeding is MC 86687, Sub. No. 3.

I should announce at this time that no free copies of the transcript will be distributed. Any persons desiring copies should order them from the reporter.

All persons who appear to participate in cross-examination, oral argument, or any other active participation in the case must be either such persons as have applied for admission to practice before the Commission, individuals representing themselves, or officers or employees of firms or corporations which they represent.

It is necessary, also, that all interveners file a formal petition for leave to intervene. If they have not done so, they may state orally on the record their interest in the proceedings and their position on intervention and within ten days of the close of the hearing must furnish the Com-[fol. 453] mission with the requisite number of copies of a formal petition of intervention and serve the parties, as required by the rules of the Commission.

Who appears for the applicants in this case?

Mr. Abeles: Charles T. Abeles for the applicants.

The Chairman: Are there any interveners or protestants?

Mr. Watkins: If it please the Court, Edgar Watkins, Jr., appears on behalf of the Southern Motor Carriers' Rate Conference.

The Chairman: Will you state your position, please.

Mr. Watkins: The Southern Motor Carriers' Rate Conference is an organization composed of over four hundred motor carriers operating in Southern territory, many of which are operating along the highways covered in this application and other applications filed by the same applicants. It is our position that the application should be denied, as the present existing service by motor carrier is sufficient to serve the public.

Mr. Abeles: May I ask at this point whether you propose at the time of the presentation of your testimony, Mr. Watkins, if any, to show the carriers, specifically, who are interested in and are opposing this particular application?

Mr. Watkins: I hope to be able to show definitely the operations of the carriers which this application would parallel.

[fol. 454] Mr. Abeles: And I presume that your opposition would be confined to those carriers?

Mr. Watkins: No, sir. The opposition is by the entire Conference.

Mr. Abeles: I presume, then, at the proper time you will show the interest of your Conference as such and the position that it takes?

Mr. Watkins: I think I have stated that very definitely.

Mr. Abeles: I do not think so.

The Chairman: Are there any other interveners or protestants?

Have all the persons appearing as counsel either been admitted to practice or applied for admission to practice before the Commission?

Mr. Abeles: I have.

Mr. Watkins: I have.

The Chairman: The applicants may proceed.

Mr. Abeles: I call Mr. Rogers.

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Rogers, will you state your name, residence, and occupation?

A. R. W. Rogers; residence, Hamlet, North Carolina; superintendent of the North Carolina Division of the Sea-[fol. 455] board Air Line Railway.

Q. Mr. Rogers, you have jurisdiction, in the discharge of your duties, over the territory covered by the application in this proceeding—that is, between Hamlet and Columbia, have you not?

A. That is correct.

Q. How long have you been superintendent over this territory?

A. Over this particular territory since September 10, 1934.

Q. And you are thoroughly familiar, are you not, with the transportation conditions affecting the railway in that territory?

A. I am.

Q. Will you describe now, Mr. Rogers, the nature of the operation for which we are here seeking authority.

A. This is a truck service, depot to depot only, on the line from Columbia to Hamlet, North Carolina, and between Cheraw and Chesterfield, following the C. & L.——

Q. Give the name of that line.

A. Chesterfield & Lancaster Railway. And the C., M. & C.—Charlotte, Monroe & Columbia, from McBee to Jefferson.

Q. The Charlotte, Monroe & Columbia and the Chesterfield & Lancaster are wholly owned subsidiaries of the Seaboard, are they not?

A. That is correct.

[fol. 456] Q. You stated, I believe, that our proposal involves the rendering of truck service only between stations served by the railway, did you not?

A. That is true; depot-to-depot movement only.

Q. Do we propose to carry the traffic on trucks on railway bills of lading?

A. Absolutely.

Q. Only traffic, then, which is offered to the railway, either originating at or destined to railway stations reached by the proposed truck service?

A. That is correct.

Q. Will you explain our purpose in seeking to establish this truck service?

A. One thing is to expedite the movement of my trains. We have trains 93 and 94, at the present time, doing both the through work and this merchandise or LCL work.

Q. I think at this point you had better state the direction and schedule of those two trains.

A. Train 93, scheduled through train to leave Hamlet, North Carolina, at 6:30 p. m., to arrive at Columbia at 11:35 p. m. Train 94, a northward train, to leave Columbia at 7:00 p. m. and arrive at Hamlet at 10:10 p. m. Those trains at the present time perform all of the freight service between Hamlet and Columbia, excepting switcher service that we operate daily between Hamlet and Cheraw.

Now, the LCL business that those through trains are han-
[fol. 457] dling for the intermediate stations slows up the movement of those through trains until we are unable to reach either Hamlet, on the northward trip, or Columbia, on the southward trip, on anything like schedule time.

Q. To what extent does the necessity of performing this intermediate local service delay the movement of those two trains?

A. During the busiest seasons of the year (that is, the fall, winter, and spring) it sometimes happens that we are unable to make our merchandising delivery at Columbia until ten or eleven o'clock in the morning.

Q. That is on the southbound train?

A. Yes, sir. On the northward trip it is not a question of making early delivery of the merchandise; it is a question of getting to Hamlet to connect with our through perishable trains.

Q. You mean that is the importance of arriving at Hamlet?

A. Yes, sir.

Q. Then, I take it, this local train No. 94 carries perishables during the season?

A. During the season, particularly during the vegetable seasons south of Columbia.

Q. And it is important, for the prompt delivery of these perishables, that they make connections with the train—
[fol. 458] mention the number of the train.

A. Train No. 80, at Hamlet.

Q. To make deliveries beyond Hamlet—is that correct?

A. That is correct. Of course, if that train is missed, under the regulation of our traffic that traffic arbitrarily sustains a delay of twenty-four hours.

Q. That delay is of some importance, I take it, in the movement of perishables?

A. Oh, yes.

Q. To what points do those perishables move, generally speaking?

A. Generally on Potomac Yards, Washington, and beyond—largely New York, Buffalo, and those points.

Q. Largely the Eastern and Middle Western markets?

A. That is correct.

Q. Where do those perishables originate?

A. Originate in South Carolina, on the line between Columbia and Savannah.

Q. Do any come from Florida?

A. Not from this gate. The perishables I am interested in on 94 originate between Savannah and Columbia, at various South Carolina Division points.

Q. Is that movement of substantial volume in perishable seasons?

A. Yes.

[fol. 459] Q. Will you explain fully now, Mr. Rogers, how the establishment of the truck service which we here propose will remedy that condition?

A. First, it will relieve these trains of making numerous stops at the small intermediate points for the purpose of unloading this LCL freight. It frequently happens that the delay, in itself, of stopping to unload the freight is not the extent of the delay. That is particularly true during the Florida season, when we have on our limited passenger trains. These freight trains, stopping for a short time to unload this freight, are then caught by these passenger trains, and a fifteen-minute delay at times may mean an hour or more.

Q. You mean a fifteen-minute delay consumed by the actual operation of stopping may mean an hour's delay in waiting for the passenger trains to pass?

A. That is correct. They catch this train in the block, and it is unable then to proceed to another station.

Q. This being a single-line operation?

A. Single-line operation.

Q. Will the establishment of this truck service, with the consequent elimination of the local delivery service by your train No. 94, enable you to completely eliminate the delay in schedule and the breaking of the connection with train No. 80 for Eastern destinations on this perishable traffic?

[fol. 460] A. To a large extent it will.

Q. It will very largely eliminate it?

A. Will very largely eliminate it.

Q. That, I presume, is a very important factor in the transportation of perishables—prompt delivery?

A. Oh, yes. We have arbitrary schedules that we have to meet in the connection with Train 80 at Hamlet. We have to meet those schedules, or else the traffic will sustain twenty-four hours' delay, because the Eastern markets will not put the stuff on the market arriving late.

Q. You mean if the perishable shipment is delayed twenty-four hours later than its scheduled arrival it can not be marketed?

A. I mean if it reaches the New York market later than the agreed zero hour it is arbitrarily carried over for twenty-four hours.

Q. That, I presume, is prejudicial to its sale on the market?

A. Yes, and also very productive of freight claims.

Q. What effect will the establishment of this proposed truck service have on local deliveries at points intermediate between Hamlet and Columbia?

A. For purely local business it will have no effect except for those stations on the C. & L. and the C., M. & C. At those points we will make an early morning delivery, because the freight will be in the depot when the agent opens [fol. 461] in the morning, as against an afternoon delivery at the present time. Now, for freight to and from these stations that originates or terminates between Hamlet and Wilmington, Hamlet and Raleigh, and Hamlet and Charlotte——

Q. Let me interrupt a minute there, Mr. Rogers. I am confining my questions for the moment to points intermediate between Columbia and Hamlet, and we will take up those other points later. You say that the proposed service will expedite deliveries on the Chesterfield & Lancaster and the Charlotte, Monroe & Columbia?

A. That is correct.

Q. Will you take a specific movement and illustrate how that improvement will be effected?

A. At the present time the C., M. & C. leaves McBee on the arrival of train No. 1, the southbound Seaboard passenger train handling mail and express. That train is due to arrive at McBee at 9.52 a. m. The C., M. & C. connection leaving McBee after the arrival of that train also carries over to the C., M. & C. stations merchandise that has reached McBee during the night on Seaboard trains 93 and 94. The result is that it is eleven o'clock or even later before they get into Jefferson. Under the trucking plan this business will be put in the Jefferson depot during the night and will be delivered, or available for delivery, at eight a. m.

Q. That is also true of all stations on the C., M. & C., [fol. 462] I take it?

A. That is correct.

Q. Is there any other station?

A. I believe there is one other little intermediate station, a flag stop—Angelus.

Q. Now, with regard to the Chesterfield & Lancaster?

A. As to the Chesterfield & Lancaster, they leave Cheraw in the morning, after the arrival of this same Seaboard No. 1, which is due at Cheraw at 9:15 a. m. The Chesterfield & Lancaster train taking the mail and express from off No. 1 also handles the merchandise brought into Cheraw by Trains 93 and 94 during the night, and some that comes down on the Seaboard switcher in the morning from Hamlet. Leaving Cheraw after nine o'clock, it is then an afternoon delivery at Pageland, the western terminus of the Chesterfield & Lancaster Railroad.

Q. About what time would that train get there in the afternoon?

A. Well, it is around noon, I would say.

Q. How would that service be improved by the installation of truck service?

A. The same merchandise or LCL freight that the C. & L. now takes out, leaving Cheraw after the arrival of Seaboard No. 1, would have been placed in the C. & L. depots during the night and would be available at all C. [fol. 463] & L. points at 8:00 a. m., or earlier if they desire.

Q. So it would save anywhere from four to eight hours, would you say, in delivery time?

A. That is correct. Unfortunately, during the winter season the mail and express is very heavy, and when they have extremely bad weather in the East No. 1 is late; and of course that means a later departure from both Cheraw & McBee.

Q. Those C. & L. and C., M. & C. trains await the arrival of No. 1?

A. Wait for No. 1.

Q. Have you anything else to say regarding the effect of the truck service upon points intermediate between Hamlet and Columbia?

A. The only other intermediate effect on LCL business—we handle from Hartsville (the cotton mills and other mills in that territory) daily cars going to Hamlet Transfer. The earlier arrival of No. 94 at Hamlet will insure those cars being worked for the transfer the same morning of arrival, for forwarding on our Western package train No.

85, which is due out of Hamlet at 12:30 noon but which we plan, in order to improve our service, to set up some two hours or more.

Q. So that will save approximately two hours of delivery on that train?

A. That is correct. Then we have an Eastern merchandise train for Portsmouth, No. 82, that leaves Hamlet at [fol. 464] 12:01 p. m. This will enable us to effectively and successfully work these cars at the transfer the same morning of their arrival.

Q. Sometimes that is not done now?

A. Sometimes we are unable, with the late arrival of No. 94, to always complete the movement.

Q. You described the effect upon traffic moving from Hamlet south. Is there any effect which the truck service will have on traffic moving to intermediate points from Columbia north?

A. Well, the same improvement in the arrival at the stations on the C., M. & C., at Jefferson and McBee, and at the stations on the C. & L., between Cheraw and Pageland, will be effective on business moving northward.

Q. The situations are entirely analogous, then?

A. That is true.

Q. I interrupted you in your reference to the movement from this territory to points beyond Hamlet. Will you now continue your statement with regard to that movement?

A. We are, as a part of this program, asking for similar truck service between Hamlet and Wilmington and between Hamlet and Raleigh. We did have such a truck between Hamlet and Monroe. We contemplate a change in our train service out of Charlotte, and with this change in train service and the additional truck service any busi- [fol. 465] ness that originates at an intermediate station between here and Hamlet for a point between Hamlet and Wilmington or Hamlet and Raleigh or Hamlet and Charlotte will be advanced twenty-four hours. For instance, a shipment moving out of Hartsville for, say, Laurinburg or Lumberton will at the present time go into Hamlet on No. 94 this morning, be worked at the Hamlet Transfer today, move out of Hamlet on the package car on Train 78 tonight, and be delivered at Laurinburg tomorrow morning, on the second-morning delivery. Under this schedule such a shipment would be picked up at McBee on the northbound

truck and connect with our Hamlet-Wilmington truck that night and make first-morning delivery at Laurinburg.

Q. Laurinburg being on the Hamlet-Wilmington line?

A. Yes, sir. The same thing applying, of course, to intermediate points between Hamlet, Monroe, and Charlotte, and Hamlet and Raleigh.

Q. So that as to deliveries to points on the lines which you have just mentioned, I understand there will be a twenty-four hour saving in time?

A. That is correct.

Q. Which will be made possible only by the inauguration of this truck service?

A. That is correct.

Q. In describing the points on the Chesterfield & Lancaster I think you mentioned Chesterfield, but you did not [fol. 466] mention Pageland.

A. I placed that as the terminus of the C. & L. Railroad.

Q. So that all references to Chesterfield would be likewise applicable to Pageland?

A. Yes, sir.

Q. I have heard you mention, several times, Hartsville. Has that any particular significance with relation to this traffic?

A. That is a very productive territory—very good business from that territory to and from the Eastern markets.

Q. And there is a substantial tonnage moving out of there?

A. Yes, sir.

Q. For which the proposed truck service will be advantageous?

A. To some extent, yes, sir.

Q. For the record, will you please state the proposed schedule of these trucks?

A. On the northward trip, leave Columbia at 7:00 p. m. and follow the Seaboard through to Hamlet, arriving at approximately 11:20 p. m. On the southward trip, leave Hamlet at approximately 1:00 a. m., follow the Seaboard to Cheraw and follow the Chesterfield & Lancaster to Pageland and the C., M. & C. from Jefferson to McBee, then follow the Seaboard into Columbia, arriving here at approximately 6.10 a. m.

Q. Does the truck reach or serve any station not served [fol. 467] by the rails of the Seaboard?

A. It touches and serves no stations or towns excepting those served by the Seaboard and its two subsidiaries, the Chesterfield & Lancaster, and the Charlotte, Monroe & Columbia.

Q. Do those highways which are to be used by the trucks parallel the rails of the Seaboard or its subsidiaries?

A. Yes, sir.

Q. Closely?

A. Very closely.

Q. Do we propose, Mr. Rogers, any reduction in train service or crews in this operation?

A. None whatever. There is no reduction in train service; no reduction in employment. In fact, it will increase employment.

Q. To the extent that it is necessary to employ drivers, I suppose?

A. Well, in addition to that, because of the night operation of the warehouses at some of the key places, such as Charlotte, Monroe, and Hamlet, and Columbia, we shall probably have to have one or more men at each of those points. Just exactly the extent of that we do not know until the volume of business develops.

Q. Until we have had some experience?

A. Yes.

[fol. 468] Q. Will there be any saving in expenses for fuel?

A. Yes; this will eliminate stopping Trains 93 and 94, and to the extent of the saving in fuel and some small crew time—overtime—there will be a saving. The principal saving will be the fuel and in the expense of stopping and starting a heavy train.

Q. I suppose, of course, it is impossible to determine the amount of that saving in advance?

A. It is rather difficult.

Q. But we do know that stopping and starting trains consumes fuel?

A. Yes, sir.

Q. What will be the effect, if any, of the service we are proposing upon competitive truck lines?

A. To the best of my knowledge there is no competitive truck line in this territory excepting between Columbia and Camden. The effect of this will be just the same as if we put into effect an improved train service.

Q. Do I understand you to say that we are making no effort and have no purpose to carry anything except traffic that is now carried by rail?

A. That is correct. The business that we are now carrying in freight-car movement under railroad bills of lading and railroad freight bills will simply be carried from station to station by truck, to be delivered or received at these [fol. 469] intermediate stations by the regularly established railroad agent at the regularly established railroad depot.

Q. You say the effect will be no greater than if we were to put on additional train service. By that I suppose you mean train service whose schedules and speed would be the same as the truck service which we propose?

A. That is correct.

Q. What is the advantage to the railway of using truck service *ice* rather than improving our train schedules?

A. One, of course, is the question of economy. The volume of business does not justify additional train mileage over what we are now providing. This is the most economical way of accomplishing the purpose. The second is, of course, that if you put on one train you have to put on two, because you have the opposite movement always. Of course, that adds to the expense of operation.

Q. Train service, of course, is enormously more expensive than truck service?

A. Yes, sir.

Q. And is only justified, of course, if the volume of traffic is there?

A. That is correct.

Q. To make the record entirely clear, Mr. Rogers, if we put on an additional train to handle the local business which is to be handled by these trucks, would the volume of busi- [fol. 470] ness and the revenue to be derived therefrom justify the additional expense?

A. The total receipts would not pay the out-of-pocket cost.

Q. The out-of-pocket cost?

A. The total receipts would not justify it.

Q. Have you any statement to make with regard to the nature of the traffic to be carried by these trucks? Is it the kind of traffic which would be carried by competitive truck lines if they existed?

A. Some of it is. Of course, we would not carry the same classes of freight that we now carry in our freight cars.

Q. How about the distance which the traffic is hauled?

A. The majority of this business which we handle at the present time and the available business is long-haul business—interstate business. We handle very little local business, station to station; for instance, from McBee to Camden or from Columbia to Blaney. There is practically none of that business moving over the railroad. The business that we handle is largely the business that comes into Columbia in through package cars for distribution, and on the southbound movement it is very largely the business which comes into Hamlet Transfer in our package cars for distribution. We handle in our Hamlet Transfer package cars from all over the country—Chicago, St. Louis, Philadelphia, Portsmouth, Richmond, Atlanta, Columbia, Jacksonville; and then the larger mill towns, such as Hartsville [fol. 471] and Wadesboro and Lumberton, they load cars of merchandise brought CFC—that is, cotton factory products—into the Hamlet Transfer for distribution throughout the United States through other package cars.

Q. What do you mean by coming into the Hamlet Transfer from the points you have mentioned?

A. As an illustration, the C. & O. Railroad in Chicago loads each day a package car into Hamlet Transfer. That makes the third-morning delivery at Hamlet.

Q. From where?

A. From Chicago. That car, of course, brings into Hamlet freight for delivery throughout this part of North Carolina and South Carolina that originates at Chicago and the Chicago territory.

Q. And points intermediate between Chicago and Hamlet?

A. No intermediate points; it is a through car that leaves Chicago—sealed car—for the Hamlet Transfer.

Q. What happens to it when it gets to Hamlet Transfer?

A. When it gets to Hamlet we load that business out for intermediate stations between Hamlet and Columbia, Hamlet and Wilmington, Hamlet and Raleigh.

Q. Let's confine ourselves to the Hamlet and Columbia territory. It is then loaded, as I understand, on a car which distributes it to the Hamlet-Columbia territory?

[fol. 472] A. That is right.

Q. As well as all other territories of destination?

A. Yes, sir. We have similar cars that come in there from Portsmouth, in connection with the steamboat lines at Portsmouth, that bring the New York, Philadelphia, and Baltimore water traffic.

Q. That traffic is not now being handled by truck?

A. No, sir.

Q. It is long-haul traffic?

A. Long-haul traffic.

Q. Do you conclude from that that this long-haul traffic would continue to move by rail whether we establish this truck service or not?

A. That is correct.

Q. And consequently the only result would be in the expedited delivery of this long-haul traffic through the use of the truck service which you have previously described?

A. That is correct.

Mr. Abeles: That is all on direct, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. Mr. Rogers, I suppose you are more or less familiar with the truck lines that operate in this territory?

A. To some extent, yes, sir.

Q. Do you know where Barnwell Brothers operate?

[fol. 473] A. No, sir.

Q. Horton Motor Lines?

A. No, sir.

Q. Miller Motor Express?

A. No, sir.

Q. You do not know that those lines maintain a truck service from the Carolinas directly into New York?

A. To the best of my knowledge they do not operate a truck line paralleling the Seaboard between Hamlet and Columbia.

Q. You testified a minute ago, I think, that the majority of the traffic that would be handled as a result of this is long-haul traffic?

A. The majority of the traffic handled is the same traffic that we are now handling.

Q. It is long-haul traffic?

A. Yes, sir.

Q. And there is long-haul traffic moving by motor carrier from the Carolinas to the Eastern points?

A. So I understand. But there is no motor carrier, to the best of my knowledge, paralleling or serving this particular territory.

Q. We are not discussing that question, because, as I understand, the basis of your purpose is to handle long-haul traffic, as you stated, I believe.

A. That is correct. The long-haul traffic is the larger [fol. 474] portion of the traffic that we are handling.

Q. Yes. Then it seems we should give consideration to long-haul traffic rather than the short-haul. Now, the Carolinas generally manufacture quite a lot of cotton-factory products.

A. Yes.

Q. And I suppose you are familiar with the fact that these truck lines operating between the Carolinas and the East handle a large portion of these cotton-factory products?

A. They handle some of it, yes.

Q. Then to that extent you would be competing with these truck lines?

A. Not in this territory.

Q. You would not be competing with the truck lines that handle the cotton-factory products from Hartsville to New York?

A. To the best of my knowledge there is no truck line paralleling the Seaboard from McBee to Hartsville to Hamlet along the line that we are following.

Q. That is not my question. I have granted that, and you have said it three times, and I assume it is true.

A. In fact, I do not know that there is a truck line between Hartsville and New York.

Q. If there were a truck service?

A. If there were a truck service they would be in competition with us.

[fol. 475] Q. That would be true from Columbia?

A. That would be true from Columbia.

Q. And from Camden?

A. Yes, sir.

Mr. Abeles: Do you propose to show the existence of truck lines?

Mr. Watkins: Probably.

Mr. Abeles: I want to know now, because if you do not the question is irrelevant.

Chairman Darby: I do not think it is necessary to take up time about packages picked up from Columbia to the Northern markets when this particular truck would not pick up any packages in Columbia going to the Northern markets.

Mr. Watkins: Mr. Chairman, as has been stated by the witness, this is part of a plan to *ap*rallel the entire line of the Seaboard with these truck operations.

The Witness: No, sir, I did not say that.

Mr. Watkins: They parallel it all the way from Richmond to Savannah.

The Witness: No, that is not correct.

Mr. Watkins: Doesn't Application Sub. 7 here apply from Richmond to Raleigh?

Mr. Abeles: That is correct.

Mr. Watkins: And doesn't Sub. 3 apply from Richmond to Hamlet?

[fol. 476] Mr. Aveles: Yes, sir.

Mr. Watkins: And the main application from just out of Columbia to Garnett, which is very close to Savannah?

Mr. Abeles: Yes, sir.

The Chairman: We are not on that application, Mr. Watkins.

Mr. Watkins: No, sir, but the whole scheme must be given consideration.

The Chairman: We will take them up one at a time.

Mr. Watkins: The difficulty we are faced with here is that the S. A. L. in filing these applications did it in such a way as to prevent the Commission from seeing the full picture, and that is what I am trying to present.

The Chairman: I think the Commission can see the picture very clearly.

Mr. Self: What was Mr. Watkins' question?

Chairman Darby: On the point of picking up packages in Columbia for the Northern markets, when I understand the truck will not pick up such packages. There will be no packages picked up in Columbia going to the Northern markets on this particular truck line.

Mr. Watkins: Is that correct?

The Witness: That is correct.

Mr. Self: It would not pick up anything between Columbia and Hamlet for delivery to Hamlet that was destined to [fol. 477] Washington, D. C., for instance?

The Witness: Yes, sir. We would pick that up for forwarding from Hamlet by freight car.

Chairman Darby: The only thing that is picked up in Columbia would be stuff going to these local stops.

Mr. Watkins: Do I understand that the application is limited so that the southbound truck from Hamlet to Columbia would not handle freight destined for Columbia?

The Chairman: If I understand right, it would be the freight that is picked up between Hamlet and Columbia and going south beyond Columbia, in less-than-carload lots.

Mr. Watkins: Would you be agreeable to having your certificate so limited, so that it would not allow you to carry freight originating north of Hamlet destined to Columbia?

The Witness: No, sir.

Mr. Watkins: If the purpose of this, in connection with these other applications, is to give them a complete trucking system from Richmond to Savannah and from Wilmington to Rutherfordton, I think that the questions which I have been trying to bring out are pertinent.

Mr. Abeles: I think the witness can answer that question, if you will repeat it. It has been a long time since it was put.

Mr. Watkins: All right, sir.

[fol. 478] By Mr. Watkins:

Q. Is it your purpose to handle a shipment, say, from Wilmington to Columbia by truck from Wilmington to Hamlet and by truck from Hamlet to Columbia?

A. Yes, sir, we would handle such a shipment.

Q. Then the effect of this application, in connection with Sub. 5, is to have a through truck operation between Wilmington and Columbia?

A. In an isolated case that would perhaps be true, but we now load from Columbia, from Hamlet, and from Wilmington through freight cars. Those through cars will be continued. A shipment that might be handled by the truck from Wilmington to Columbia or from Columbia to Wilmington would be an exceptional case, as a general propo-

sition, because with the through cars between those points there should be no necessity for it. But if one did show up, where it was most convenient, and it could be expedited, why I should say it would handle it.

Q. Didn't you testify a few minutes ago that your truck on the Columbia-Hamlet run would make connections with the truck from Wilmington to Hamlet?

A. That is correct, and I used as illustration the intermediate points, to and from which there is at the present time no established package-car service.

Q. Then you have set up, by your schedules, a system whereby you would be prepared to handle through freight [fol. 479] from Wilmington, North Carolina, to Columbia by all-truck service?

A. It would be possible.

Q. And your schedules are set up so it would not only be possible but it would beat the rail service?

A. Yes.

Q. So the most economical way of handling freight from Columbia to Wilmington would be by all-truck service?

A. In certain cases it would probably work out to that extent.

Q. Does your proposed schedule from Raleigh to Hamlet connect?

A. Northward?

Q. Yes.

A. Yes. Southward I believe it does not.

Q. So it would probably work out to be more expeditious between Raleigh and Columbia by all truck service?

A. No, the schedules would work out there to the best advantage by rail.

Q. Let's take the schedule of the truck now that moves from Monroe to Hamlet. You have that service now, haven't you?

A. Yes.

Q. And you are proposing a service from Rutherfordton to connect up with this service at Monroe?

A. Yes, sir.

[fol. 480] Q. Which would give you service from the cotton-mill area around Charlotte?

A. No, I would say that truck service from Rutherfordton would generally connect with train service at Charlotte, and Charlotte to Hamlet by train service.

Q. Why does your application cover from Rutherfordton to Monroe rather than from Rutherfordton to Charlotte?

A. Because I want to serve the intermediate points from Charlotte to Monroe.

Q. But you have your service scheduled clear through, haven't you?

A. Have from Rutherfordton to Monroe. But the business west of Charlotte coming into Charlotte by truck will be moved by train into Hamlet.

Q. Would you be willing for your application to be so limited?

A. No, sir.

Q. Then, while you have stated that in certain instances you would use rail service in connection with truck service, you are not willing for any of your applications to be so limited? Is that correct?

A. That is correct. That is a question, I think, that counsel can answer.

Mr. Abeles: I have already answered it.

By Mr. Watkins:

Q. Do you propose to move any truck-load business on [fol. 481] any of these routes? Full truck loads from any of these points?

A. We are going to move the volume of business that is presented, whatever that is. Under present conditions there is no truck-load movement. Now, we are making certain setout merchandise cars. When the business gets heavy enough, we set out these cars. At the present time we have a car from Hamlet to Cheraw that contains freight for the C. & L., one from Hamlet to McBee, and one from Hamlet to Camden. For instance, the Hamlet-Camden car would contain freight for Bethune, Cassatt, and Camden. They would unload freight at Bethune and Cassatt and set the car out at Camden. Some of that would continue.

Q. Would this truck that leaves Hamlet at one in the morning carry any freight destined to Columbia, South Carolina?

A. Ordinarily no, but it might.

Q. The purpose of it would be to drop off freight at intermediate points?

A. That is correct.

Q. But it would not have freight for Columbia?

A. As a general proposition it would not have freight for Columbia. There might be a delayed package or something of that sort that would show up that would be put in. But ordinarily it would not carry freight from Hamlet to Columbia. Just ordinarily good railroading would mean [fol. 482] that it would move by solid car from Hamlet to Columbia, by train service.

Q. Do you know how long the Seaboard Air Line has been in receivership?

Mr. Abeles: I don't think that is relevant.

Mr. Watkins: It is a question of being ready, willing, and able to operate under this Act.

Mr. Abeles: Are you going to challenge the ability of the Seaboard to operate this truck service from a financial standpoint?

Mr. Watkins: I am.

Exam. McCaslin: I might say there that the burden would be on the Seaboard to show that it is ready, willing, and able.

Mr. Watkins: Did you answer the question?

A. I don't recall the exact date.

By Mr. Watkins:

Q. About six years?

A. Something like that.

Mr. Watkins: That is all.

Examination by the Board.

By Mr. Self:

Q. You may have stated this, but I did not catch it. What are the commodities that originate in the territory affected between Pageland and Cheraw and between Columbia and Hamlet that would move in emergency shipment?

A. Nothing of any consequence originating in that local territory for outbound movement of any kind. The big [fol. 483] percentage of all of the business is inbound, to these stations.

Q. And it would be distributed, coming in from long distances, rather than picked up and carried to Hamlet?

A. That is correct, yes, sir.

Q. Have you made any estimate of the less-carload business that would originate between these points, destined to Hamlet, going out or coming in?

A. No, sir. The only thing we have any record of is the total LCL business originating at these stations, which includes cotton and all such commodities.

Mr. Abeles: Would you like to have that, Mr. Commissioner?

Mr. Self: I was just thinking that in order to show public convenience and necessity you ought to show something about the volume of business in this territory.

Mr. Abeles: I might say at that point that, our principal purpose in establishing this truck service being to relieve the trains of local service, the fact that there is some traffic originating at all these points would suffice for that purpose. I think the witness can give the total figures, if you wish it.

Exam. McCaslin: I think he should if he can.

Mr. Self: I think it is important for your side of the question to do it if you can.

[fol. 484] Redirect examination.

By Mr. Abeles:

Q. Have you the figures there for the total LCL traffic?

A. I have for six months.

Mr. Self: You see, no matter what we do here, the Commission is going to want some figures.

The Witness: I have no figures on the C. & L. or the C., M. & C.

Mr. Self: Have you made any estimate of the less-carload shipments out of Hamlet over the territory involved in this application?

The Witness: I haven't those figures. They can perhaps be secured. I have got the figures for a six-months' period with me, showing the total inbound LCL merchandise freight and the total outbound merchandise freight in both directions.

Mr. Self: I think that would be satisfactory.

By Mr. Abeles:

Q. Have you those figures before you?

A. In round figures, yes, sir.

Q. Can you give them for the record?

A. For the six-months' period ending December 31, 1937, in tons, it was as follows:

	Tons	
	In	Out
Kollocks	9	2
Cheraw	529	553
Patrick	31	53
McBee	66	6
Bethune	71	90
Cassatt	11	1
Camden	430	116
Lugoff	49	213
Blaney	48	74
Columbia	3479	613

[fol. 485] (Witness continues.) Now, this period—August, 1936, to January, 1937, took the four months with outbound cotton. That is the reason for that tonnage. There is no carload movement, as a general thing, at most of the local stations. At most of the local stations the cotton movement is the important movement.

Mr. Self: You do not consider cotton, generally, as less-carload movement?

A. No, sir, but it is considered in these figures. We would, for instance, pick up a single bale of cotton at Bethune, perhaps, to save a train stop. Probably we would not carry that all the way in to Hamlet or Columbia but drop it at some intermediate point.

Q. Do you include any tobacco in there?

A. There is practically no tobacco of any appreciable amount in there; it is just not a tobacco-raising territory. Included in it, for instance, though, are shipments of as much as 10,000 pounds that were loaded at those stations and billed out as a through car, but carrying the local rate. Due to going to several consignees, it was included in this tonnage. It does include lumber.

Mr. Self: And other minimum carload shipments?

A. Yes, sir. Includes all shipments at less-carload rate.

Chrmn. Darby: Any other questions?

Mr. Watkins: Yes, sir.

[fol. 486] Recross examination.

By Watkins:

Q. Mr. Rogers, you have some intrastate rights in the State of South Carolina, have you not, to operate motor vehicles?

A. Intrastate, yes, sir.

Q. Where are those rights?

Mr. Abeles: What is the relevancy of that?

Mr. Watkins: Part of the general scheme.

Mr. Abeles: We have here before us an application for interstate rights. I can not see any possible relevancy of intrastate rights within the state, Mr. Chairman. I do not want to cut Mr. Watkins short, but at the same time I do not want to cumber the record with unnecessary testimony.

Mr. Watkins: This is a hearing on convenience and necessity; and the service being performed, either intrastate or interstate, has a bearing on the validity and purpose of these applications.

The Chairman: Mr. Abeles, you object to his question?

Mr. Abeles: If I understand, he is now asking what intrastate rights the Receivers have in South Carolina. I believe that is right?

Mr. Watkins: That is right.

The Chairman: I am going to note your objection and let him answer the question.

By Mr. Watkins:

Q. Will you answer it, please?

[fol. 487] A. The only knowledge I have is that we have a permit from the South Carolina Commission covering the operation of this particular line that we are now hearing for the interstate permit.

Q. Are you now operating that line?

A. Yes, sir.

Q. Have you got any intrastate rights between Gaston and Garnett?

A. I do not know.

Exam. McCaslin: That is not proper in this hearing.

Mr. Abeles: I object to all these inquiries about intrastate rights.

The Chairman: I noted your objection, but I let him answer the question. I do not think the question as to the Garnett and Gaston rights has any bearing on this.

Mr. Self: Off the record.

(Discussion between members of Board and Mr. Watkins, outside the record.)

The Chairman: What question was it you wished to ask him, Mr. Watkins? State it again.

Mr. Watkins: My question was whether he had intrastate rights between Hamlet and Monroe.

Mr. Abeles: The Board understands that I object to all these questions, does it not?

The Chairman: Note the objection, and he may answer [fol. 488] the question.

A. (By witness:) We now operate and have operated for several years i...rastate truck between Hamlet and Monroe.

Q. When did that operation begin?

A. About 1931, to the best of my recollection.

Q. Have you not got an operation between Gaston and Garnett?

Mr. Abeles: Just a moment, if the Board please. My understanding was that the Board ruled that Mr. Watkins could inquire as to intrastate rights between Hamlet and Columbia, the route involved in this proceeding, but could not go beyond that. Intr-state rights have no relevancy whatsoever, so far as I can see, to the issue involved in either this proceeding or in any of the other interstate applications which are now pending before the Commission. The intrastate certificate grants no right whatsoever to carry interstate traffic, so if you find the Receivers possess these certificates they have no interstate rights; nor has this any bearing whatsoever upon the issue of public convenience and necessity involved in either this immediate case or any of the other proceedings pending before

the Interstate Commerce Commission to which Mr. Watkins has referred. I do not say that they are harmful, but I think they are cluttering up the record with irrelevant matters.

Mr. Self: The first question Mr. Watkins asked was if they held any intrastate rights in South Carolina. Then, [fol. 489] in argument, we reached a point where he inquired specifically about two intrastate points, which related to the other case. The Chairman ruled, as I understand it, that he could ask about service between Hamlet and Columbia but not about Gaston and Garnett.

Mr. Abeles: Every one of these questions, as I understand it, except the Hamlet-Monroe operation, relates to cases now pending before the Commission on other routes and which have been set for hearing by the Commission at other times and places.

Mr. Watkins: As I understand the ruling, I am not permitted to ask questions concerning the present truck operations of the applicants under intrastate rights except where they parallel the application here being heard.

Chairman Darby: Mr. Watkins, I do not think the question should be permitted to come in in regard to a case that will come before a board later on. You asked the question about specific points, but had your question been in general, I think the Board would have allowed it to have been answered.

Mr. Watkins: May I ask this question? Where does the Seaboard Air Line Railway presently operate trucks?

Mr. Abeles: Are you speaking of South Carolina or all over its system?

Mr. Watkins: Speaking of the entire system.

[fol. 490] Mr. Abeles: Of course, I object to that. I think it is so far afield that it can have no possible bearing on this application.

The Chairman: I am going to allow you to note your objection but will rule that he may ask the question.

Mr. Abeles: Yes, sir.

The Chairman: I think that will not hurt your case any.

The Witness: What was the question?

Mr. Watkins: The question was, where does the Seaboard Air Line Railway presently operate trucks?

A. The only one that I have specific knowledge of is between Hamlet and Monroe.

By Mr. Watkins:

Q. Your knowledge is limited to a certain part of the system?

A. My knowledge is limited to my own division.

Q. What is the boundary of that division?

A. Columbia to Raleigh and Wilmington to Rutherfordton, including certain short lines or branch lines which break out in that territory. What is known as the North Carolina Division.

Q. Then you do not know whether the Seaboard has any truck operation south of Columbia?

A. Not specifically, no, sir.

Q. Nor north of Raleigh?

A. Not to my present knowledge.

[fol. 491] Q. Even though freight might move through your division on the other divisions, you do not know how it moves outside of your division?

A. No, sir.

Q. You never make any inquiry concerning that?

A. No.

Mr. Watkins: That is all.

Mr. Abeles: Mr. Chairman, I shall have some redirect examination of this witness, but I understand that at this time you wish to adjourn.

Chairman Darby: Yes, sir; the hearing will recess until one o'clock. The Examiner has some witnesses that he did not finish up last night, and it will take him some forty-five minutes or an hour, and it would not be necessary to convene back here until one o'clock.

(Whereupon a recess was taken, at 11:30 o'clock a. m., until 1:00 o'clock p. m.)

Afternoon Session

Chairman Darby: Please come to order.

Mr. Abeles, you had not finished with Mr. Rogers, I believe?

Mr. Abeles: No, sir.

R. W. Rogers resumed the stand and testified further as follows:

Redirect Examination.

[fol. 492] By Mr. Abeles:

Q. Mr. Rogers, Mr. Watkins, in his cross-examination, attempted to develop the view that through the various truck services which we are proposing to establish we intend to set up a system of through truck transportation, in purpose and effect, that would compete with existing highway carrier agencies. He brought out, for example, the fact that we are now seeking to establish truck service between Wilmington and Hamlet and that we thus should be in position to carry traffic on trucks all the way from Wilmington to Columbia. I should like you to state your views on that assumption that Mr. Watkins made.

A. Such a movement would be possible but would be simply incidental and to a considerable extent improbable. We do not contemplate the elimination of any existing package cars. We have package cars out of Columbia into Hamlet, out of Hamlet into Columbia, out of Hamlet into Wilmington, out of Wilmington into Hamlet. The volume of that business is such that it would not be profitable for us to undertake to handle it by truck—the larger part of it, because it would necessitate so many trucks that the truck expense for that volume would be out of reason as compared with the cost of the train movement. In other words, where the volume is present the economical move is by train service.

Q. In other words, as I understand what you have just said, if we have train service available between, for ex- [fol. 493] ample, Wilmington and Columbia, we shall use the train service in preference to the truck service in the absence of some other reason for using the trucks. Is that correct?

A. That is correct. That is just ordinary good railroading. At the present time we make cars at Hamlet, for instance, for Cheraw, McBee, and Columbia. Our trains have carload movement to and from those points every night. The volume of the LCL freight going to those three towns justifies the set-out car, and consequently that is the economical thing to do, and that is what we would

continue to do. The points we are specifically trying to serve are the smaller intermediate points, where the train would normally have to make a separate stop for the simple purpose of having to handle a very small volume of LCL freight.

Q. Possibly one or two packages?

A. That is right.

Q. Where it would not be good railroad practice to set off a car?

A. That is correct.

Q. Have we any purpose, in both this immediate proposal and the others to which Mr. Watkins made reference, of substituting in its entirety truck service for train service?

A. None whatever. This contemplates no reduction in existing train service whatsoever.

Q. Can you, in corroboration of that, give me a specific [fol. 494] example of a shipment moving over, from Wilmington or from any point on the Wilmington-Hamlet line, to Columbia and tell us how it would normally move?

A. Well, of course, as a matter of actual fact there is practically no movement from intermediate stations in the two territories, but assuming that there was one from Blaney going to Lumberton——

Q. Lumberton being on the Hamlet-Wilmington line?

A. On the Hamlet-Wilmington line. On this trucking service it would move into Hamlet by truck and connect with the truck at Hamlet for Lumberton. A shipment out of Columbia would move in the Columbia-Hamlet merchandise train.

Q. If it were consigned to Wilmington how would it normally move from Hamlet?

A. By rail. That is the normal movement. There might be exceptional cases where something would go by truck.

Q. For example, can you give us an exceptional instance where we might want to use the truck?

A. Offhand, I should say only a delayed shipment or misrouted shipment or something of the sort, which is out of its regular turn, principally terminal-to-terminal movement.

Q. Where the delivery could be effected, because of those exceptional circumstances, by truck more quickly than by rail?

A. That is right.

[fol. 495] Q. But outside of these exceptional instances we would not abandon our rail service?

A. From terminal-to-terminal movement.

Q. I should like to ask you this general question. With reference to truck service already in operation, how does the cost of transporting traffic compare with train service?

A. Of course, there are many factors that you have to take into consideration. Speaking purely from memory, truck figures run from about eleven cents to twenty cents.

Q. Now, I am not referring to the comparative costs of truck and train operation, but to the comparative economy of shipping by rail, on the one hand, and by truck, on the other, where both forms of service are available.

A. Where there is any volume of business, the cheapest form of transportation we can possibly operate is rail transportation. Where you have a very limited volume of business, such as at these intermediate points—say a wheelbarrow load, the truck service or co-ordinated rail and truck service is the more economical.

Q. You mentioned the thought that in exceptional circumstances we might want to use all truck service between terminals, for instance, say from Columbia to Wilmington, or from Wilmington to Columbia; and you explained what those exceptional circumstances might be. Is that the reason we do not wish, as Mr. Watkins inquired, to restrict [fol. 496] our certificate to the extent he indicated?

A. That is right.

Q. In other words, it might, on occasion, impair the flexibility and utility of this service?

A. That is correct.

Q. Are you familiar with the cost of operating truck service?

A. We operate on my division one such truck now, between Hamlet and Monroe.

Q. And you have had experience with that for how long?

A. My experience has been over a period of about three years.

Q. Do you feel qualified to estimate the cost of operating the Hamlet-Columbia service involved in this proceeding?

A. Well, I haven't the detailed figures with me; but, speaking from memory, the cost of the truck would run somewhere between fifteen and twenty cents a truck mile.

Q. How does that compare with the per-mile cost of train operation?

A. For the service in this territory its cost would run between $1.05 and $1.25 a mile, depending upon the season of the year and the volume of the business and those things.

Q. So that, if you had to put on additional train service to accomplish the purposes which we are seeking through this application, it would cost you anywhere from five to six times as much per mile of operation to do it by train as to [fol. 497] do it by truck?

A. That is correct.

Q. Is there sufficient tonnage available or in prospect to justify any such cost?

A. There is not sufficient business to justify any additional train service—that is, regularly. We do have occasions, when we have excess tonnage, when we do run more than one train. Particularly, we do operate extra trains—operate solid melon trains—during the peak of the melon season.

Q. We would continue to do that during those peak seasons, would we not?

A. Oh, yes.

Q. This truck service would not affect that in any way?

A. Not at all.

Q. But normally speaking, there is not sufficient LCL traffic to justify the operation of an additional regular train?

A. There is not.

Q. And that is the reason we seek to inaugurate this truck service?

A. Yes, sir.

Q. Now, I want to refer to the subject of the less-carload tonnage involved in this territory through which the truck service is proposed. You gave some figures this morning, [fol. 499] but I should like to have you recapitulate those and tell us how much less-carload tonnage per year is consigned to and forwarded from the stations which will be reached by the proposed truck service.

A. I haven't the figures for the stations on the Chesterfield & Lancaster Railroad nor for the stations on the Charlotte, Monroe & Columbia Railway, but I have for the intermediate stations on the Seaboard.

Q. Between Hamlet and Columbia.

A. Between Hamlet and Columbia, but excluding Hamlet and Columbia, there is about 4,700 tons a year.

Q. And it would be a substantial relief to the freight trains if they were relieved of the necessity of picking up and delivering that tonnage at those intermediate stations?

A. That is correct.

Q. And that is really the primary purpose of this service sought?

A. That is correct. Of course, we do at the same time, Mr. Abeles, as I expalined this morning, expect to improve the movement somewhat by improved train service at Hamlet.

Q. Yes, I understood there would be other advantages, which you described this morning.

Mr. Abeles: That is all, Mr. Chairman, for this witness.

The Chairman: Any further questions, Mr. Watkins?

[fol. 499] Mr. Watkins: Yes, sir, just a few.

Recross-examination.

By Mr. Watkins:

Q. I understood that the reason you do not want your certificate limited is that if it developed to be a cheaper method of operation you would use truck service rather than rail service?

A. I said there might be times when such a thing would develop, yes, sir.

Q. And your primary purpose in this proposal is to save expense, isn't it?

A. That is one of the things. The primary purpose is to improve our train movement.

Q. By the elimination of LCL freight?

A. By the handling of that LCL freight on the trucks, thus permitting the through trains to make better movement over the lines.

Q. But you do contemplate an economy in the handling of less-than-carload freight?

A. The saving that you speak of, or the economy that you speak of, would be the elimination of stops by these through trains.

Q. But it would work an economy?

A. Some economy, yes.

Q. And wherever you could work economy by the use of truck service you would use the truck service rather than [fol. 500] the rail service?

A. Yes, I should say we would.

Q. And if it should develop that you could save money in the handling of LCL traffic between Wilmington and Columbia by truck you would probably use the through truck service rather than the joint rail and truck service?

A. If such a condition should develop we probably would; but it is difficult to see where, as a terminal-to-terminal movement, the truck can afford as economical a service as the established train service, where you already have the service on and it is simply a question of utilizing the service that you already have. If it were a question of putting on additional train service, then of course the truck operation would be the more economical.

Mr. Abeles: If that could be saved?

The Witness: If that could be saved.

By Mr. Watkins:

Q. What is your rail schedule between Wilmington and Columbia?

A. We have no through trains from Wilmington to Columbia. All service of that kind breaks on Hamlet. We have at the present time two freight trains each way a day between Hamlet and Wilmington.

Q. Take a typical shipment, Mr. Rogers, leaving Wilmington in the afternoon and being handled by rail service. What trains would that be worked on and at what times [fol. 501] would it move?

A. A shipment from Wilmington to Cheraw, I will say for example, leaving Wilmington, put in the depot this afternoon, would come into Hamlet tomorrow morning and should go out on the Hamlet-Cheraw switcher.

Q. It would leave Wilmington in the afternoon?

A. That is right.

Q. And reach Hamlet when?

A. Reach Hamlet probably two or three o'clock in the morning.

Q. When would it leave Hamlet for Columbia?

A. I was giving you an illustration to Cheraw.

Q. Let's say Columbia.

A. For Columbia it would leave on No. 93, at six p. m.

Q. Six p. m.?

A. Yes.

Q. And arrive at Columbia when?

A. For early next-morning delivery.

Q. That is second-morning delivery?

A. Second-morning delivery.

Q. I notice in your application 86687 Sub. 5 a shipment could leave Wilmington at 7.00 p. m., arrive in Hamlet at 12.30 a. m., and leave on the Columbia truck at 1.00 a. m., and arrive in Columbia at 6.00 a. m.

A. Yes, that is an overnight service.

[fol. 502] Q. That would give you an overnight service from Wilmington to Columbia, whereas your present rail service is two days?

A. Yes, sir.

Q. Then if it should develop that it is a much quicker method of transportation by motor carrier, would it not be possible that you would use truck service through?

A. Yes, it is possible that it could be used.

Q. Then by the use of these interlocking applications it is quite possible that you would develop through truck service between many of the points on your line?

A. There would be some, yes.

Q. And that is the reason you would not want to be limited in your applications to a co-ordinated truck and rail service?

A. That is one of the reasons, as I said a while ago, that we would not want to be limited.

Q. Then we are really getting away from this so-called co-ordinated rail-truck service, are we not?

A. To some extent, yes, sir. I have stated since the noon recess that there would be shipments perhaps occasionally in that territory that might make a continuous truck movement, but the thing we are trying to do is to relieve these through trains of having to make those intermediate stops.

Q. How long have those through trains been making those intermediate stops?

[fol. 503] A. Have been making them for years. For the past several years the volume of business, particularly the carload business, has been very small. Now that the pulp mills are opening up there is a lot of pulp wood being cut, and the blind sidings are putting out these cars, and the switching service and through service is increasing on those

trains, and we have to do something to insure earlier arrivals at both Hamlet and Columbia, as a I explained this morning.

Q. Well, instead of a co-ordinated truck and rail service, doesn't this amount to a substitution of truck service for rail service?

A. No, sir, it does not, because 95 per cent of the total volume, or more, will be handled at some point by rail.

Q. But you would not like to be restricted?

A. No, sir.

Mr. Watkins: I think that is all.

Re-redirect examination:

By Mr. Abeles:

Q. When you said, in response to one of Mr. Watkins' questions, Mr. Rogers, that to a certain extent we are getting away from the co-ordination theory, you did not mean, did you, that in any case where we could practically move a shipment from Wilmington to Columbia or from Columbia to Wilmington we would employ the truck service rather than the rail service?

A. Not a bit in the world. And I have stressed all along [fol. 504] that this does not contemplate the elimination of any existing rail service whatsoever.

Q. And when you said that approximately 95 per cent of the traffic—I think you said the traffic from terminal to terminal?

A. Ninety-five per cent of all the traffic.

Q. Ninety-five per cent of all the traffic would continue to be carried by rail?

A. No. What I was trying to emphasize is that this business that would move entirely by truck is very, very trivial in extent and that at least ninety-five per cent of all the merchandise would at some point be handled by train service.

Q. So what you meant is that the amount of traffic that would be handled by all truck, in what Mr. Watkins has referred to as a substitute rather than a co-ordinated service, is insignificant?

A. Very, yes, sir.

Q. So that this is, in purpose and effect, a co-ordinated plan?

A. Yes, sir.

Q. Let us suppose, Mr. Rogers, that we actually did seek to enter into an independent truck service; we should have to follow our rails, should we not, between Wilmington and Columbia?

A. Yes, sir.

[fol. 505] Q. Do you happen to know the highway route between those two points?

A. Only generally.

Q. Does it follow the rails?

A. Not the rails of the Seaboard.

Q. Is it shorter or longer than the Seaboard route?

A. Much shorter.

Q. Then if we did propose to establish all-truck service—which we do not, should we be anywhere near a position of parity with the independent truck lines?

A. We would have much greater mileage. In other words, our truck following our lines from Wilmington to Hamlet to Columbia would be going along two legs of a triangle, whereas a normal highway movement would be directly across from Wilmington to Columbia.

Q. In those circumstances, do you think we would ever undertake to compete with the independent truck lines?

A. No, sir.

Recross-examination.

By Mr. Watkins:

Q. What truck company were you thinking of when you said that their line from Columbia to Wilmington is much shorter?

A. I said if there were one. I do not even know that there is one, because the service we propose is entirely different from the service they offer.

[fol. 506] Q. And you have not made any study to find out whether or not there is existing truck service on any of the routes for which you have applied?

A. As a general proposition, I do not know the existing truck service, speaking from memory.

Q. Then you are not in position to testify that the existing truck service is not sufficient?

A. No.

Q. Isn't the Seaboard Air Line Railway starting on a program of paralleling its lines everywhere with motor truck service?

A. I can't answer that question, because I only know my own division.

Q. They have not left out any place in your division, have they?

A. No, except one or two isolated points, I would say.

Q. But you do not know anything about the general policy of the company?

A. No, sir.

Q. I believe you testified that the cost per mile of truck operation was about one-fourth of the train cost, where your volume is low?

A. No; I said one-fifth.

Q. Is that correct?

A. It will run somewhere in that neighborhood. The truck service will vary, and the railroad service will vary [fol. 507] as to cost, but one-fifth wil be a very conservative estimate. That is mile for mile.

Q. Then, speaking from your observation, if the tonnage from any particular points should decrease, you might then substitute highway service for rail service?

A. We see no such condition in sight, and it is not contemplated.

Q. For economy's purpose, if such a situation should develop you would take the more economical method of transportation?

A. We do not contemplate any reduction in train service, nor do I see that any service we have set up to this time could possibly take the place of any train service. As to what the future may develop, that, of course, is speculation. Certainly on this line in here, where we have only one train a day each way, it would be impossible to substitute truck service for train service.

Q. Do you contemplate any increased tonnage in connection with this movement?

A. In some cases, in conjunction with the improved train service which we hope to develop through Hamlet, yes, sir.

Q. That would be tonnage diverted from some other form of transportation?

A. Only to the extent that the present tonnage is being diverted.

[fol. 508] Q. Any additional tonnage that you might receive would be diverted from another line of movement, be it rail or be it truck?

A. That is correct.

Q. It might be from another railroad or from a truck line?

A. I said any increase in business would naturally be diverted from some other means of transportation—perhaps private truck. We have in mind, for instance, that many wholesalers now haul their own goods. We hope that some of that will come back to the railroad through this improved and co-ordinated truck service. Frankly, we think that is our largest field for increasing our business.

Q. Mr. Rogers, do you mean to tell me that you think the private truck is handling the tonnage to small towns?

A. Yes, sir, to a large extent.

Q. More than the common carrier?

A. Yes, sir.

Q. That is your view?

A. Yes, sir—that is, to these small places in here.

Q. There is a through rail service from Wilmington to Columbia via the Atlantic Coast Line, isn't there?

A. That is right, yes, sir.

Q. And to a certain extent your truck service from Wilmington to Columbia would compete with the Atlantic Coast Line?

[fol. 509] A. Just offhand I can not state whether the rule of circuity of route would permit us to handle Wilmington-to-Columbia business, or not. If it does, we already compete with Atlantic Coast Line. I don't know what their package-car service is from Wilmington to Columbia, or whether they have one or not.

Q. But you are cutting off twenty-four hours' time in your service from Wilmington to Columbia?

A. Yes, it would be possible in some cases to cut twenty-four hours out.

Q. Has your company ever operated any existing truck lines with the purpose of co-ordinating your rail service with such truck-line service, within your knowledge?

A. Not to my knowledge, no, sir.

Q. You would have knowledge of anything in your division?

A. Not necessarily. As a general proposition, if anything of that kind were up I would be told of it. But I

have not been told of this, and it is possible that it may be considered without my knowledge. As a general proposition I woud know it.

Q. The truck service that is being performed in your division is directly under your supervision, is it not?

A. Yes, sir.

Q. And if there were any co-ordinated truck service in connection with existing truck lines in your division, or any [fol. 510] attempt to make such arrangement, you would know about it?

A. As a general proposition, yes.

Mr. Watkins: That is all, I believe.

Mr. Abeles: These questions on cross examination, Mr. Chairman, broaden the field of this inquiry, and while I regret to prolong this examination there are certain very important points that I think I have to bring out.

The Chairman: You may bring them out.

Re-redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, the last series of questions asked you whether you had made any inquiry or had any knowledge of the possibility of utilizing independent truck lines for the service we have in mind. I wish you would explain or give your views on that as a possible or practicable plan.

A. Well, in this particular territory, to the best of my knowledge, there is no existing truck line except between here and Hamlet, so it would not be possible for existing companies to work out a co-ordinated Seaboard and independent trucking service. As a general proposition, as I see it, to work out a co-ordinated Seaboard-independent trucking service would mean that we would short-haul ourselves on freight to and from our own stations. That is one objection. The second objection would be that we would open our way-bills, our bills of lading, for the knowledge and inspection of a competing carrier and permit of [fol. 511] very intensive solicitation against us. A third is that so long as these are Seaboard trucks, with Seaboard men operating them, they are under the direct supervision of the Seaboard and we can control the schedules and have a more flexible service and can come nearer co-ordinating

it with our train service and more nearly relieve our train service of the things which we want to relieve it of.

Q. In other words, effectuate our purpose effectively?

A. Yes, sir. Another thought is that as long as they are manned by Seaboard employees we have supervision and direction of their movements and are in better position to police and supervise the services which we set ourselves up to render to the public.

Q. If we should enter into any such arrangement as Mr. Watkins suggests, we should, of course, be responsible for a shipment throughout its entire movement, should we not?

A. Well, that would depend upon the working agreement that you referred to, and that would have to be worked out. We would certainly be responsible to issue a clear receipt and so forth to that trucking line, and then we would certainly be responsible to the shipper, because the stuff would be traveling under Seaboard bill of lading.

Q. That is exactly what I meant—that we would be responsible to the shipper or consignee?

A. That is right.

[fol. 512] Q. Has that suggestion of Mr. Watkins any significance with reference to loss and damage claims?

A. Oh, yes, and the question of accounting in payment of freight charges, too. For instance, on a shipment moving from an Eastern point to Blaney, we will say, the Seaboard would be responsible to the Eastern lines to collect and reimburse them for their proportion of the through earnings.

Q. Then I take it that your attitude towards Mr. Watkins' suggestion, generally speaking, is that we could not afford to feed the transportation service of traffic for which we are responsible to the shipper to any independent agency which is not directly under our supervision and control?

A. That is my judgment, yes, sir.

Re-Recross examination.

By Mr. Watkins:

Q. You do interchange with other railroads, don't you?

A. Yes, sir.

Q. With the same responsibility?

A. No; each railroad is responsible for the shipment while in its care.

Q. Would a truck carrier be any less responsible than a rail carrier?

A. As it is, it would depend upon the system that is worked out. You understand that the accounting and the settlement of freight claims between the railroads was worked out on a throughly established basis agreed to by [fol. 513] all the railroads. Now, there is no truck line that is covered by that agreement, and if the Seaboard brought into this through service an outside trucking line then they would have to assume the responsibility and protect the connecting railroads.

Mr. Abeles: When you say "they" you mean whom?

A. The other rail carriers and the Seaboard that participate in the through haul.

By Mr. Watkins:

Q. But you have made no attempt to get a truck line into a similar agreement as the one existing between the rail lines?

A. No, and with the numerous truck lines that would be involved it seems to me it would be a job beyond comprehension to work it out.

Q. You mean the numerous ones with which you would have to make the agreement?

A. Yes.

Q. How many do you contemplate you would have to make the agreement with?

A. I am speaking about all the railroads in the United States and all the truck lines in the United States.

Q. I am speaking about the Seaboard Air Line Railway. Has the Seaboard Air Line attempted to enter into such an arrangement?

A. I told you a while ago not to my knowledge.

[fol. 514] Q. So you are not prepared to say whether it is possible or not?

A. The truck lines might be agreeable.

Q. And these objections that you have named were thought out by you without consultation with the truck lines?

A. That is correct.

Q. Do you know where the routes of the following truck lines are? Atlantic States Motor Line; Barnwell Brothers;

C. T. Jordan; Martin Motor Line; Lewis & Holmes Motor Express; A. D. Fowler Motor Express; T. G. Chaplin; Parrish Freight Line; and Poole Transportation Company.

Mr. Abeles: Is the question whether he knows where they operate?

Mr. Watkins: Yes.

Mr. Abeles: Mr. Chairman, unless he proposes by this question to impeach some testimony that has been submitted by Mr. Rogers on direct examination it seems to me that the cross examination has reached beyond bounds. My objection is simply for the purpose of keeping this proceeding within the proper limits.

Chairman Darby: Did you ask him the question if he knows where those truck lines operate?

Mr. Watkins: Yes, sir.

The Chairman: I do not see that that question will hurt [fol. 515] anything.

Mr. Abeles: It will not hurt anything, but I do not see that it will add anything.

The Chairman: I think he may answer that question. Do you know?

The Witness: I do not.

Mr. Watkins: That is all.

Examination by the Board.

By Mr. Self:

Q. Going back to the first part of your testimony this morning, one of the reasons for co-ordinating truck and rail service is to eliminate a lot of stops with the train?

A. Yes, sir.

Q. Assuming an identical case, where you would leave one of these points with the truck ahead of the train, how many stops do you estimate that would eliminate on a given train schedule?

A. I should say offhand in our discussion with the trainmasters we figured six each way a night on this particular run.

Q. You mentioned the fact there that there were certain less-carload shipments—that is, less carload as measured by rail. What percentage of that tonnage would you imagine could conveniently go by truck?

[fol. 516] A. Well, I should say that in this territory in here we would continue train movement of at least 75 per

cent of this tonnage, by box car. For instance, set out at McBee a car of freight for McBee and diverging points—that is, the Hartsville line and the C., M. & C. Railroad; and we would probably put in that car the freight for the intermediate points between McBee and Camden, so that when the truck got to McBee, having gotten rid of part of its load, it could pick this business up and carry it the rest of the way.

Mr. Self: That answers the question satisfactorily.

Redirect examination.

By Mr. Abeles:

Q. What is your mileage between Hamlet and Columbia?
A. One hundred and six miles, I believe.
Q. And in that distance you will eliminate these six steps?
A. Each way.
Q. Each way?
A. Yes, sir.

Mr. Abeles: That is all.

Exam. McCaslin: Does he have operating-cost data or anything?

Mr. Abeles: He has already testified to the cost of truck operation.

Exam. McCaslin: Of this operation?

Mr. Abeles: He has, and the cost per mile.

[fol. 517] Mr. Self: He said eleven to twenty cents per mile.

The Examiner: That is indefinite.

Mr. Abeles: Perhaps the Examiner would like to ask him some questions.

Exam. McCaslin: I would.

The Witness: Unfortunately, I did not bring those figures with me.

Questions by the Examiner:

Q. I just want to go into this. What percentage of load do you figure these trucks would carry from one point to another?

A. There are going to be certain points on the division where they will have a reasonably full load. That is the reason why, I should say, we would utilize our set-out cars,

to have good service in there and at the same time eliminate duplication of our set-out service.

Q. They would be moving cargo at LCL rates?

A. Yes, sir.

Q. Have you made any figures as to what the average yield per trip from Columbia to Hamlet should be?

A. I have not. We were primarily interested in trying to relieve 93 and 94, to get them into the towns with our through cars, for early placement of merchandise at Columbia and the perishables at Hamlet. Then, of course, we wanted if possible to conserve with it these LCL revenues.

[fol. 518] Q. Have you made any estimate of the net return which you expect to realize from the utilization of trucks and that from the local freight service, which you hope to reduce to some extent? I don't mean the amount of the service, but the use of the service will be somewhat reduced. Have you made an estimate on any basis such as 100 pounds?

A. No, sir.

Q. Or on a weekly or monthly or any other basis?

A. No, sir, I have not.

Q. Who is going to be in charge of your truck operation?

A. It is part of the division organization. Directly under the same division officers as the train service.

Q. What experience have your division officers had in the operation of trucks?

A. We have had the truck service on this division since 1932.

Mr. Abeles: I am going to bring that out in just a minute.

Exam. McCaslin: That is all.

Re-Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, in the absence of actual experience with this operation, is it possible to make any intelligent estimate of the revenues that would accrue directly from the truck operations, based upon the cargo carried by the trucks at less-carload rates? What I am trying to get at is this: We do not know, do we, and in the absence of actual [fol. 519] experience we can not estimate what volume of

cargo the trucks are going to carry under the plan we have in mind?

A. No, sir.

Q. And we shall not be able to give any figures of that sort until we have had experience, shall we?

A. On this line?

Q. On this line.

A. No, sir.

Q. So any estimate you might have attempted would be virtually nothing but guesswork?

A. Purely guesswork.

Mr. Abeles: That is all.

The Chairman: Are there any further questions for the witness?

If there are no further questions, you may be excused.

Mr. Wm. T. Callahan: I represent the Brotherhood of Railway Trainmen. Up and down the State of South Carolina——

Mr. Abeles: Just a minute, Mr. Callahan. You have entered an appearance, haven't you?

Mr. Callahan: Yes, sir.

Mr. Abeles: Are you appearing in opposition?

Mr. Callahan: I am appearing for the Brotherhood of Railroad Trainmen.

[fol. 520] Mr. Abeles: In support or opposition?

Mr. Callahan: Opposition. I have just a brief statement I want to make. We are not appearing in opposition to the railroad's supplementing its service, but I appear for 640 railway trainmen in the state of South Carolina——

Mr. Abeles: This is just a statement, isn't it—not testimony?

Mr. Callahan: It is testimony. I wish to have it put in the record.

Chairman Darby: Then you will have to be sworn.

Mr. Abeles: We object, sir. We have some more witnesses, and if it is in opposition we think it should be deferred until the opposition puts in its testimony.

The Chairman: The testimony is out of order at the present time.

Off the record. (The Chairman made an announcement outside the record.)

We will take a short recess now.

(Whereupon a recess of five minutes was taken.)

Chairman Darby: Yet's proceed, gentlemen.

Mr. Watkins: I wish to make a motion. Mr. Chairman, the evidence introduced this morning by the applicant indicates that it is the purpose of the applicants to handle through traffic over all the routes covered by Dockets MC 86687 and sub numbers thereunder. Under Section 205-b [fol. 521] of the Motor Carrier Act, such applications should be heard by an examiner, as there are more than three states involved; or, if the Commission construes this section as limited only to motor-carrier operations, then there are three states involved, and the applications should be consolidated and heard by a joint board composed of representatives of the states of Virginia, North Carolina, and South Carolina. Thus this hearing is proceeding illegally. I make a motion that all these dockets be consolidated and set for hearing before the proper authority.

Chairman Darby: Mr. Abeles, we will hear from you.

Mr. Abeles: If the Board please, the section of the Act to which counsel for the protestants refers is Section 205-b, which provides, in substance, that when operations of motor carriers conducted or proposed to be conducted involve not more than three states the Commission shall, and when they involve more than three states the Commission may, refer the proceedings to a joint board composed of representativs of each of the states involved. The interprefation which counsel for the protestants places upon the Act would require the Commission, in every case involving interstate operations in which the motor-carrier service for which authority is being sought is not completely isolated from every other form of transportation, either rail or motor carrier, to refer the case to an examiner, because there is [fol. 522] potentially, at least, if not actually intended a through service involving every state in the country and every community in every state. Obviously, it seems to me, it was not the intent of Congress, in passing this Act, to take into consideration service connecting with that service for which authority is sought in the particular proceeding under consideration but merely to confine the test as to whether the proceeding shall be referred to a joint

board or an examiner (and, if to a joint board, to representatives of what states) to the physical operations involved in the motor-carrier application under consideration, and not to take into consideration the potentialities involved in every operation. Here we have an operation between Hamlet and Columbia, involving two states. The mere fact that we may, through connections with our rail service, transport traffic which is carried by the operation for which authority is sought into other states than the two here involved or even may, through other truck service for which we are seeking authority, transport it into a third state does not under the law, as we construe it, require the Commission to refer it to a board composed of representatives of any state other than those directly involved in the motor service for which authority is here sought.

Mr. Watkins: Mr. Chairman, my motion is based upon the theory that traffic between Virginia, North Carolina, [fol. 523] and South Carolina under these proposed operations would move under common management by motor carrier, and therefore common management and not interstate traffic is the test. I also apply the same common-management theory to the joint rail-truck service, which would extend the movement to other states than just the states of North and South Carolina, as the Seaboard Air Line's rail lines extend into other states. I am not basing this objection upon the possibility of interchanged freight but upon the theory that the freight would be handled by the applicants only.

Mr. Abeles: I might, in very brief reply, point out that, if by reason of a particular operation such as we have here there is a through movement into other states which might affect traffic in those states, I think it is the privilege of representatives of those other states to appear either in support of or in opposition to the particular operation; but I do not think that, under the Act, representatives of those states could become members of the board hearing the case.

Chairman Darby: Mr. Watkins, the Board will take your motion under consideration but will proceed with the testimony, and we will decide on your motion before a decision is made as to issuing or denying a certificate.

Mr. Self: We are all here, and we ought to put in the evidence that is here.

[fol. 524] Mr. Watkins: Mr. Chairman, I am not trying to stop the proceeding, as long as we are here; but I do think, in order to accomplish the purpose, there must be a definite ruling on this subject before we close the hearing in this case. May I suggest that we transmit this motion to the Commission immediately and see if it is possible to get a definite ruling?

Mr. Self: No, sir. We will pass on that ourselves. That is our business here.

The Chairman: Then, if you want to appeal from the decision of the Joint Board, you may do it.

Mr. Watkins: I doubt if you have the authority, because there are other cases coming before other joint boards.

Mr. Self: You will have a thirty-day opportunity to appear before the Commission. We think there is something in your motion, but we do not want to give a decision now. We want time to consider it.

Mr. Abeles: Might I say there, if the Board please, that even though the Board reach the conclusion that the motion of counsel for protestants is well taken, as a matter of discretion the evidence should be taken, so that in the event the Commission hould disagree with the Joint Board it will have the evidence before it and can act on its merits.

I also call the Board's attention to this language in the [fol. 525] Act, Section 205-b: "The joint board to which any such matter is referred shall be composed solely of one member from each state within which the motor-carrier or brokerage operations involved are or are proposed to be conducted." It does not say each state within which the motor-carrier or brokerage operations, or any service in connection with such operations may be conducted, but it confines the board to members from each state in which the motor-carrier operations themselves shall be conducted, and it seems to me quite obvious that from that language Congress proposes to confine the board to members from the states in which the proposed operations are to be conducted.

Chairman Darby: We will proceed with the testimony, gentlemen.

Mr. Abeles: I call Mr. J. E. Leppard next.

J. E. LEPPARD was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. State your name, residence, age, and occupation.

A. J. E. Leppard; residence, Chesterfield Court House; occupation, attorney; age, forty-one.

Q. You are a representative in the South Carolina legislature, are you not?

A. Yes, sir, from Chesterfield County.

[fol. 526] Q. You reside at Chesterfield Court House. Is that close to the point shown on the map attached to this application as Chesterfield?

A. That is the town of Chesterfield. The court house and the town are the same thing.

Q. You heard Mr. Rogers' testimony this morning, did you not?

A. I heard the major portion of it, yes, sir.

Q. You heard the advantages which he stated would result from the inauguration of the truck service for which we are asking authority here, did you not?

A. Yes, sir.

Q. Will you tell the Board, from the standpoint of a resident of Chesterfield, your attitude towards this proceeding?

A. Yes, sir. I came down here, gentlemen, representing the public of Chesterfield County generally and particularly the people of the little town of Chesterfield. The town of Chesterfield is situated twelve miles from the town of Cheraw on the main line of the Seaboard. Six miles from Chesterfield is situated another little town in our county, called Ruby. Then three miles farther west is the town of Mt. Grogan. Nine miles farther west from the town is the town of Pageland. Ten miles southeast from the town of Pageland is the town of Jefferson. About ten or twelve miles southeast from there is the town of Mc-[fol. 527] Bee. All of those towns are situated in Chesterfield County. The beginning point is the town of Cheraw, and the ending point the town of McBee, here on the main line of the Seaboard Railroad. From the town of Cheraw the C. & L. Railroad runs from Cheraw west through the towns of Chesterfield, Ruby, and Mt. Grogan, with its

terminus at Pageland. From the town of McBee, running northwest, is a branch-line railroad running up to Jefferson.

Q. That is the C., M. & C. Railroad?

A. C., M. & C. At Chesterfield, which is in a rough way the center of the county, we are roughly about 65 miles from Charlotte—60 to 65—and 85 miles from Columbia. There is no common-carrier truck service in Chesterfield County. The merchants in these towns in Chesterfield County do the major portion of their business with the merchants in Monroe (wholesale merchants), Charlotte, and in Columbia. So far as the present rail service is concerned, merchandise or shipments or cargoes deposited with the railroad in Charlotte take about two days to get around there for delivery after they leave the town of Cheraw. They come down through Monroe down to Hamlet; if not a carload lot would be changed there and come down to Cheraw and on to Chesterfield, Ruby, Mt. Grogan, and Pageland. Or from McBee they come up to Jefferson, and there are some little shipping points on that line. The [fol. 528] situation is about the same with merchandise shipped out of Columbia. Now, our people, the merchants particularly, are very much interested in this proposition because by the truck service which is proposed, as we understand it, merchandise could be deposited with the railroad, delivered to them, the afternoon of today and come in over that truck service and be delivered in Chesterfield, Mount Grogan, Ruby, Pageland, and Jefferson the next morning. We have needed that service for a long time. A good deal of business, as has been testified here today, is done by private truckers. When they can get a truckload they will travel, and if they do not get a truckload they do not travel. There is no regularity or satisfaction in that kind of service. The merchants in these towns say that if they could get a regular——

Mr. Watkins: Isn't that hearsay?

The Witness: I will say from my knowledge, then, if you object to the hearsay. I know personally, from my own experience, that these merchants who are engaged themselves—a good many of them—in trying to truck their own freight would discontinue that, which has not been a profitable proposition for them, and take advantage of their service.

That is my viewpoint. I came down here as a private citizen; I have no connection with the railroad; I came down here at my own expense and at the expense of the [fol. 529] people of my county, particularly of my own little town.

By Mr. Abeles:

Q. That is all you have to say, Mr. Leppard?

A. I can add this. So far as the Seaboard's application is concerned, I feel that they have their depot facilities, and they propose to co-ordinate that truck service with the rail service, and it would be economical, and we could rely upon a more dependable service by them than we could by any ordinary trucking operation.

The Chairman: Any questions?

Mr. Watkins: No questions.

The Chairman: You may be excused, Mr. Leppard.

L. C. WANNAMAKER was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Wannamaker, where do you live?

A. Cheraw, in Chesterfield County.

Q. That is one of the points which would be reached by this proposed truck service, is it not?

A. Yes, sir.

Q. You heard the testimony of Mr. Leppard, just completed, did you not?

A. Yes, sir.

Q. Is your position with respect to this application the [fol. 530] same as his?

A. Identically.

Q. Is there any special circumstance, with respect to your point of residence or elsewhere, concerning which you would wish to testify, in addition to what he has stated?

A. No. I am equally interested in the whole public of Chesterfield County, and I believe that they are entitled to and need the saving in time that their shipments will get under this plan.

Q. You think that the business men of your community and the surrounding communities in your county would benefit by this co-ordinated truck service?

A. Yes.

Q. And the improvement which has been testified to this morning?

A. Yes.

Mr. Abeles: That is all.

The Chairman: Any questions, Mr. Watkins?

Cross-examination.

By Mr. Watkins:

Q. Are you particularly interested in Cheraw or the rest of it?

A. The entire county. I am, along with Mr. Leppard, a member of the lower House from Chesterfield County, and we feel that this is a proposal in the public interest of the shippers and those who will use the service.

[fol. 531] Q. What business are you in?

A. I am a lawyer.

Q. Do you know the present service in there, either by rail or truck?

A. Do I know the present service?

Q. Yes.

A. I understand that a shipment from Charlotte does not reach Cheraw as quickly as it will under this proposal.

Q. You have been told that?

A. Yes.

Q. You do not know how long it takes now from Charlotte?

A. I will state here, in answer to your first proposition, I have heard merchants in Cheraw complain of inability to get quickly small shipments from Charlotte to Cheraw. The Cheraw Hardware & Supply Company is one.

Q. Have you any information concerning the trucking service at Cheraw?

A. To my knowledge, I know of no established trucking service rendering this service from North Carolina into Chesterfield County.

Q. You are not familiar with the fact that the New South Motor Express operates daily schedules from Cheraw into Charlotte?

A. No, sir.

Q. You did not know that?

[fol. 532] A. No, sir. I do know that no service is rendered—no trucking service is rendered—from Cheraw to Pageland of the nature proposed here, and that section of Chesterfield County contains our heaviest population and our best lands. In other words, the section served by the C. & L. Railroad, which is paralleled by State highway No. 9, is the wealthiest and most populous section of that county.

Q. You are mainly interested in that part of the operation between Cheraw, Chesterfield, and Pageland?

A. Oh, no. From Pageland to McBee, through Jefferson, I would say this—that the lands around Jefferson produce the highest quality of cotton of any locality in Chesterfield County. The area lying between Cheraw and McBee, however, is poorer land; in fact, the United States Government is now in process of purchasing about 100,000 acres lying between Cheraw and McBee. So our agriculture and industry in that county lies in a triangle, from Cheraw to Pageland and back to McBee.

Q. All those points are in Chesterfield County?

A. Yes, sir.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Abeles:

Q. Even if truck service is now rendered between Cheraw and Charlotte, that does not satisfy the requirements of these other communities on the Chesterfield & Lancaster [fol. 533] and the Charlotte, Monroe & Columbia?

A. Obviously not.

Mr. Abeles: That is all.

Chairman Darby: Any further questions, gentlemen?

You may be excused, sir.

Mr. Abeles: If the Board please, I have two other witnesses, Mr. John W. Crews and Mr. Joseph Berry, both representatives in the lower house of the State legislature from Richland County. Their testimony would be very much along the lines of that of Messrs. Leppard and Wannamaker; and in the interest of expedition I shall waive

calling them, merely stating that their testimony would be along the same line.

The Chairman: If they are here you might put them on to state that.

Mr. Abeles: I believe they are not here now. I do not think they can add anything to the record, and I will waive their testimony.

I should like now to call Mr. Stanley.

W. L. STANLEY, was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, state your name, residence, and position. [fol. 534] A. W. L. Stanley; Vice-President, Seaboard Air Line Railway Company, and Chief Public Relations Officer for its Receivers. Residence, Atlanta, Georgia.

Q. Are you an official of the corporation, Mr. Stanley?

A. Yes, Vice-President.

Q. Among your duties, I understand, is the forming of the policy of the railway and its Receivers with respect to the establishment of motor-carrier service adjacent to its rails. Is that correct?

A. I have had general charge of that, in connection with other officers of the company.

Q. And you are intimately familiar, are you not, with the policy of the company in that respect?

A. Yes.

Q. Will you please state, in your own language, the general purpose which is sought to be accomplished by the railway and its Receivers in the establishment of this, as well as other, motor-carrier service?

A. Our studies preliminary to the inauguration of any truck service have been based upon several considerations: First, the expediting of freight that has been delivered to us by the public for shipment; second, the co-ordination of rail and truck service; third, an effort to so arrange the schedules of our local freight trains that by the use of these trucks they may be operated at hours most convenient to the [fol. 535] public, especially in the handling of carload business to the smaller stations and in the switching of indus-

tries at hours most convenient to the operators of those industries. By that I mean that it has been generally and almost universally the custom to operate local freight trains in the daytime because the agency forces were on duty during those hours. By this arrangement, in many cases we shall be able to operate those local freight trains at night and to expedite the movement of less-than-carload freight for the smaller stations and to switch sawmills and other industrial plants at hours that will result in the least interference with the operations of those plants and also expedite the movement of the carload business from those industries. We have never sought to eliminate train service. We have sought, as was testified today by Mr. Rogers, to eliminate stops of the through trains at the small stations, so as to reduce the cost that is incident to those heavy through trains making stops at those stations, and to expedite the movement of through traffic. Our general purpose, however has been to give to the shipping public this co-ordinated rail and highway service and to expedite the business which the public sees fit to deliver to us. Of course, just what we shall do with each operation depends upon the facts and circumstances applicable to that operation. In many instances we load from the large wholesale shipping [fol. 536] points carloads of freight destined to the various small stations, which move by train at night to some central point. From the car is taken out the next morning the freight that is destined to the smaller stations within a reasonable radius and delivered by truck.

That, I think, in a general way, Mr. Abeles, answers your question.

Q. We have involved in this particular application the operation of a truck line paralleling two subsidiary lines of the Seaboard, the Chesterfield & Lancaster and the Charlotte, Monroe & Columbia. Will you state what effect this proposed operation will have upon those companies?

A. Mr. Rogers has already testified as to the physical results to be obtained by these operations. I might say that the Chesterfield & Lancaster Railroad and the Charlotte, Monroe & Columbia Railroad, both short lines, are subsidiaries wholly owned by the Seaboard Air Line Railway. They have never been able to pay their way. They have been unable, in the majority of the years, to pay their operating expenses, with the result that they have been a drain

upon the treasury of the Seaboard Air Line Railway. To the extent that their revenue may be increased by the use of these trucks, as we propose, to that extent the Seaboard Air Line Railway will be relieved of contributing to the deficit of these railroads.

[fol. 537] Q. From your experience with operations throughout the Seaboard system, do you feel that the inauguration of the service here proposed holds out hope of placing these subsidiary lines upon a self-sustaining basis?

A. Yes, it holds out that hope and certainly will have a tendency to reduce the loss which those railroads are now sustaining.

Q. We, of course, have no desire to abandon those railroads if it can possibly be avoided, have we?

A. The policy of the Seaboard Air Line Railway has been, as to all its branch lines, to exhaust every possible means to prevent their abandonment.

Q. Despite that policy, have they been compelled during the last few years to abandon some of their branch lines?

A. Yes, sir, especially in Florida.

Q. With consequent loss and damage to the communities served by those branch lines, I presume?

A. Yes. I have in mind one of the latest lines on the Seaboard Air Line Railway—the line to Cedar Keys, Florida—that had to be abandoned. That community now has no rail service of any kind whatever.

Q. That was a fishing community of considerable consequence, was it not?

A. Yes, sir, located on the Gulf of Mexcio. I might say, Mr. Abeles, this; that according to our theory there are [fol. 538] three forms of transportation by land, one solely by rail, one solely by highway, and (the third) a combination of rail and highway service. Each of those, properly developed, is in the public interest, and the latter is what we are trying to do.

Q. Mr. Stanley, the Federal Motor Carrier Act provides in Section 207 that in a proceeding of this character a certificate shall be issued by the Commission if it is found that the applicant is fit, willing, and able properly to perform the service proposed. What is the financial position of the railway with respect to this particular operation involved here?

A. There is no doubt about the financial ability of the Receivers to render this service. The Seaboard Air Line

Railway went into the hands of receivers on the 23d day of December, 1930. There has never been a time since that date when the railroad did not earn a sufficient amount of money to pay its operating expenses and taxes, and they have been met currently. Unfortunately, we have not been able to pay the interest on our bonded indebtedness. In 1936 the total railway operating revenue of the Receivers of the Seaboard Air Line Railway Company was $38,346,055.37, and the net railway operating income (that is after deducting tax accruals and operating expenses) was $2,920,582.99. That was not sufficient to pay the interest on the [fol. 539] bonded indebtedness of the railroad, but it was amply sufficient to operate the railroad and to pay its taxes.

Q. And in your opinion, I presume, there is no question about the financial ability of the Receivers to establish and efficiently operate the truck service here involved?

A. Absolutely not.

Q. Have you a copy of the annual report of the Seaboard with you?

A. I have it in my hand here.

Mr. Abeles: If the Board please, we should like to offer in evidence a copy of the Annual Report of the Seaboard Air Line Railway and its Receivers for the fiscal year ended December 31, 1936.

I have one extra copy of this which I shall be glad to turn over to Mr. Watkins, and if other copies are desired I can readily furnish them at a later date.

The Chairman: It will be marked Exhibit No. 1.

Without objection, Exhibit No. 1 is received in evidence.

(Exhibit 1, Witness Stanley, received in evidence.)

By Mr. Abeles:

Q. Now, Mr. Stanley, as the official largely responsible for the policy of the railway with respect to motor-carrier operations, can you tell us whether the Seaboard is now operating truck service auxiliary to its rail transportation over other parts of the system and, if so, where and to [fol. 540] what extent?

A. Yes. The first service that was established by us and which is now in operation is between Monroe and Hamlet, North Carolina, a distance of approximately 54

miles. I do not know the exact date that that service was inaugurated, but it was about five years ago.

Q. It was in 1931, was it not?

A. 1931, as I recall it; I am not positive as to the exact date. The next service, in chronological order, was between Drifton and Monticello, Florida, a distance of about four miles, paralleling a branch-line railroad that we have between those two points. On January 1, 1935, we established a truck service between Morriston and Waldo, Florida, a distance of approximately 50 miles, and on the same date one between Tampa and Brooksville, Florida, a distance of about 55 miles. Subsequently we established a service first between Jacksonville and Wildwood, Florida, and afterwards extended that from Wildwood to Tampa, Florida, a distance of 212 miles. We also have a service between Fernandina and Yulee, Florida, a distance of 12 miles. We have another, as I recall it, which was established early in the year 1935 between Rhine and Lyons, Georgia, a distance of 58 miles. Those, I think, cover our operations, a total, if I have made no mistake, of 445 miles of truck operations, all of which are confined physically [fol. 541] to the limits of some particular state.

Q. And involving experience in truck operations of between six and two years. Is that correct?

A. Yes, sir—well, running from two up to approximately six. I think it was about five years ago that the Monroe-Hamlet service was put on.

Q. So the Seaboard management has had extensive experience in truck operation in Florida and elsewhere?

A. Yes, sir. I think I might say there this, on the question with respect to abandonment of trains. During all that time the Seaboard has never substituted a truck service for a train service; and, as a matter of fact, since the truck was inaugurated between Morriston and Waldo, Florida, we have put on one additional train in that territory. That was since January 1, 1935.

Q. Your conclusion from that is that the establishment of this auxiliary truck service has no tendency to reduce or eliminate our train-service operations?

A. Absolutely not.

Q. Have these truck operations fulfilled the function for which they were intended?

A. Yes, they have given an expedited movement of LCL freight.

Q. Has it been your experience that in any case in which those truck operations have been established they have [fol. 542] tended to drive out of business competitive truck service in any way?

A. I can perhaps illustrate that by giving the Board some figures which I have recently developed in the state of Florida. It has not put a single truck line out of operation, and those that were operating in the territory where we established our service have had a material increase in their earnings, as shown by the reports of the Florida Commission, since we established our service. In other words, in 1930 the earnings of the common-carrier truck lines in Florida for their entire line, some of them operating up into Georgia, were $1,100,000, in round figures. In 1935, the last year for which any data are available from the Railroad Commission's report, the earnings were $2,008,000; while during the same period the freight earnings of all the railroads in Florida decreased 33 per cent.

Q. Mr. Stanley, Mr. Rogers this morning stated that it will be impossible to estimate the earnings which would accrue to the truck line involved in this proceeding because of lack of experience with this particular operation. From your experience with operations in Florida and elsewhere, can you state to the Board whether you consider that the inauguration of services of this character by the railway is economically justified and, if so, why?

A. Yes. It is economically justified, and before I make [fol. 543] that statement I should like to make this observation—that we consider the earnings on these truck lines as a part of the earnings of the railroad. To all intents and purposes, from every practical viewpoint it is a railroad operation; it is not a truck operation. We have not attempted to segregate those earnings for the reason that if we did so it will involve the necessity of keeping two sets of accounts, which would be very expensive. But from an economical standpoint we have gotten results by expediting the movement of our LCL freight and have given those people who want to deal with us—and there are quite a few of those—the best possible service which the railroad could furnish through the co-ordination of rail and truck service.

Q. Have we ever abandoned a truck service once established?

A. I do not recall any. I think we did at one time in North Carolina have authority to operate a truck to handle mail between Norlina and Hamlet, when our train service was rather meagre. The Commission itself will remember. If I am not mistaken that has been abandoned, but that was a specific service.

Q. But so far as the service of carrying general commodities is concerned, every one that was started is still in operation?

A. Every one that I recall.

Q. And we have had sufficient experience with the major-
[fol. 544] ity of them now to have measured accurately their value to the railroad and to determine whether they were justified, in our judgment, have we not?

A. Not only that, but also to measure their value to the public.

Q. Is there anything further you wish to say, Mr. Stanley?

A. I do not recall anything, although I could probably say a great deal.

Cross-examination.

By Mr. Watkins:

Q. Mr. Stanley, it is now the general policy of your railroad to parallel all of your rail lines with truck service?

A. It is not. Our policy, Mr. Watkins, is first to confine ourselves to the highways that are nearest to our railroad and which connect the communities served by our railroads and only to serve those communities which are served by our lines. Our second policy is to study each individual station on the railroad and from the facts developed to determine whether or not we feel that it would be economical and in the public interest to establish truck lines in those territories, but we have never contemplated the paralleling of our railroad in its entirety by truck lines.

Q. Take the states of Virginia, North Carolina, and South Carolina, Mr. Stanley, and your applications that are now on file. You pretty generally parallel all of your rail serv-
[fol. 545] ice in those three states?

A. No. In Virginia we would parallel it from Richmond to the Virginia-North Carolina state line, but we do not parallel the line that runs from Norlina to Portsmouth. In North Carolina, with a few exceptions most of it would be paralleled. In South Carolina there would be much

of it—quite a considerable lot of it—that would not be paralleled by truck service.

Mr. Self: Would it be paralleled northward from Hamlet?

The Witness: Yes, from Hamlet to Richmond, if these applications for certificates are granted. In South Carolina the line from Sumter to Charleston would have no truck service. Some of the branch lines in that territory would have none.

By Mr. Watkins:

Q. In Georgia the Seaboard Air Line Railroad proposed and tried to pass through the legislature a bill authorizing railroads to parallel their entire system with motor-truck operations, did it not?

A. No, sir; that is not putting it exactly as it is. The Seaboard Air Line Railway and other railroads tried to pass a bill which would authorize the Public Service Commission, upon application of a railroad for a specific service covering its rail stations, to operate trucks between such points as it might apply for authority, without proof [fol. 546] of public convenience and necessity.

Q. In other words, it took from the Public Service Commission its discretion and left the discretion of where such service would be inaugurated with the rail carrier.

A. It rather, Mr. Watkins, proceeded upon this presumption—that the railroads were the first of all common carriers and that the independent carriers which were on the highways under the original motor-vehicle act of Georgia had been permitted to operate without proof of public convenience and necessity and that therefore the oldest transportation facility of the state should be given the same privilege. That was the theory of the bill.

Q. And the Seaboard Air Line has opposed practically every truck operator's application for a certificate before the Georgia Commission?

A. I would not say practically every one; we have opposed quite a few.

Q. And you have opposed them generally throughout the entire Southern territory?

A. In quite a few places; in some places we have not. The fact is, Mr. Watkins, that most of them were there under the grandfather clause already.

Q. It is true, is it not, that you were the only witness before the Senate committee that represented the railroads asking for that bill to be passed?

[fol. 547] Mr. Abeles: I object to that question. I have no objection to Mr. Stanley's answering it, but I should like to keep out of this record wholly irrelevant matter.

Mr. Watkins: I am asking the question to develop the policy of the Seaboard Air Line Railway.

Mr. Abeles: I think the policy of the railroad has already been fully covered, and Mr. Stanley's activities before the Georgia or any other legislature has no bearing on this case, so far as I can see it.

The Chairman: Mr. Watkins, I am going to sustain Mr. Abeles' objection, because I see no relevancy.

Mr. Watkins: May I note an exception, please?

The Chairman: Yes, sir.

By Mr. Watkins:

Q. There was a similar bill before the Florida legislature this last session, was there not?

A. And passed.

Q. And passed. You operate in what states besides Virginia, North and South Carolina, Georgia, and Florida?

A. Alabama.

Mr. Abeles: You mean by rail, don't you?

Mr. Watkins: By rail.

By Mr. Watkins:

Q. I believe in describing your motor-carrier operations you did not give us the date of the institution of the service between Jacksonville and Wildwood?

A. Those services were established between Jackson-[fol. 548] ville and Wildwood sometime, as I recall it, about the middle of the year 1935.

Q. Prior to June first?

A. I could not tell you exactly.

Q. How about Fernandina and Yulee?

A. Sometime in 1935.

Q. You do not know whether they were established prior to June 1, 1935?

A. I have not that data.

Q. Do you know whether or not they are covered by applications pending with the Interstate Commerce Commission?

A. I think they have been registered with the Interstate Commerce Commission.

Q. Are you handling interstate freight over those lines at the present time?

A. Yes, sir. That is, freight that originates and moves by rail into Florida and then may be handled in Florida solely by these trucks.

Q. But interstate freight that is moving into Florida at this time?

A. Yes, sir.

Q. I believe the figures you gave on the earnings of motor carriers and rail carriers were for 1935?

A. 1930 w[illegible]935.

Q. I believe, of the six operations you have, five of them [fol. 549] were started after January 1, 1935?

A. Yes, but I also said in my testimony that the earnings of the independent truck operators competing with us in the territory where we established these operations January 1, 1935, had increased since the inauguration of our service.

Q. I did not understand it that way.

Q. I am very glad you asked me that, because I can bring it out. The figures for all of the truck lines in Florida as a whole were not available subsequent to the year 1935; but individual reports for the year 1936, as well as for the year 1935, of those lines that were in competition with us, were available; and from those reports filed with the Florida Railroad Commission I got my data.

Q. And the rail business increased, too?

A. No, sir, the rail business during that period up through 1935 had decreased 33 per cent.

Q. But beginning with 1935?

A. Beginning with '35, both by rail and truck there has been a slight increase. Beginning with '30, there has been a decrease in the rail revenue and an increase in the truck revenue.

Q. I believe you stated it is the policy of the Seaboard Air Line Railway not to abandon any rail service where this motor service is inaugurated?

A. We have not abandoned any, so far as I know.

[fol. 550] Q. You will still run freight trains, then, on this branch line from Cheraw out to Pageland?

A. Yes. We have one round trip or service there, which represents a minimum; and that train would have to be run if we expect to handle any passengers, mail, or express, or carload business.

Q. So your freight-train service between Cheraw and Pageland will be maintained even though this permit to operate trucks between those two towns is obtained?

A. For the reason that we do not nor could we economically handle carload business by truck, and the train has got to be maintained to handle that.

Q. Then the result will be that, in order to maintain service between Cheraw and Pageland you will be running a train out there and also running a truck out there if this application is granted?

A. That is true, certainly.

Q. There will be somewhat of a duplication along that line?

A. No, it will not be a duplication, because the train is going to handle almost exclusively carload business, and the truck is going to handle less-than-carload business and very much more promptly than it can at present be handled by the train.

Q. But you are going to have to have the expense of the rail operation as well as the expense of the truck operation [fol. 551] on that line—is that true?

A. Yes.

Q. You will have both if this application is granted?

A. Yes.

Q. Today you have only one?

A. Today we have the expense of the train in that territory, but that truck does not operate solely between Cheraw and Pageland but operates between Hamlet and Columbia.

Q. That is true. And that same situation would be true as to your branch line between McBee and Jefferson?

A. In both instances the trains to which you refer are mixed trains, that handle passengers, mail, and express, as well as freight. Of course, we can not handle passengers on a freight truck.

Q. So in paralleling those two branch lines, where you now maintain a service by rail only, you will have two services, one by rail and one by truck?

A. So far as the freight is concerned, yes; but the freight train will be practically relieved of the handling of all LCL freight; and as a result of that the movement of carload, freight, which it will continue to handle, will be expedited.

Q. I believe you said that neither of those branch lines had ever been able to pay its operating costs?

A. I think I said there are very few years within my recollection in which they had paid them.

[fol. 552] Q. Does the charter of the Seaboard Air Line Railway give you permission to operate trucks?

Mr. Abeles: I object to that. It has been held by the Commission time and again and by the Supreme Court that it is not the function of the Commission to inquire into the charter. I refer you to the Claiborne and Annapolis Ferry case, which was decided about 1931 in a proceeding under Section 1(18) of the Interstate Commerce Commission Act involving the Commission's authority under that section to establish an extension of a line of railroad.

Mr. Watkins: I want to refer the Joint Board's attention to the Pennsylvania Truck line case, just decided by the Commission, where the Commission criticised the railroad for establishing a subsidiary company to operate truck lines where it had authority under its own charter.

Mr. Abeles: No, I take exception to that statement of the Pennsylvania Truck Lines case by Mr. Watkins. The Commission in that case simply held that it would not approve of the intervention of a holding company between the Pennsylvania Railroad and the operating truck line which it was seeking to acquire. The Commission did not in that case assume the power to inquire into or pass upon the charter right of the railroad company. That question arose at the instance of counsel for the applicants, Pennsylvania Truck Lines, through his explanation of the reason [fol. 553] why the holding-company device was employed there, explaining that counsel for the Pennsylvania was in some doubt as to the charter power of the railroad to operate truck lines.

Mr. Self: This is off the record.

(Discussion followed, outside the record.)

Chairman Darby: On the record.

Exam. McCaslin: The Examiner might interpose on the record at this time the statement that a copy of the charter has been filed with the application as an exhibit, and possibly the Commission will find it necessary itself to determine whether it is within the authority of the charter to operate trucks.

The Chairman: I will sustain the objection, Mr. Watkins.

By Mr. Watkins:

Q. Did you get any authority from the court wherein this receivership is pending to file this application?

A. I recall no specific order in this case, but there is a general order entered by the court instructing the Receivers to do whatever may be necessary, in their opinion, to operate and conserve the property. In my opinion, that is broad enough to cover this situation.

Mr. Watkins: That is all, I think.

The Chairman: Any further questions?

Mr. Abeles: Is there anything further you would like to say, Mr. Stanley?

The Witness: I have no desire to say anything further.

[fol. 554] The Chairman: The witness is excused.

Mr. Abeles: That is all we have, gentlemen.

The Chairman: Mr. Watkins, how many witnesses have you?

Mr. Watkins: I had four this morning, but some of them have left.

The Chairman: We could not possibly get through this case this afternoon?

Mr. Watkins: No, sir.

Chairman Darby: We will adjourn, then, until nine o'clock tomorrow morning.

Whereupon adjournment was taken, at five o'clock p. m., until nine a. m. Saturday, June 12, 1937.

Saturday, June 12, 1937, 9 a. m.

Chairman Darby: The hearing will come to order.

Exam. McCaslin: Off the record.

(Discussion between the Examiner and counsel, outside the record.)

The Chairman: We will proceed, gentlemen.

Mr. Abeles: If the Board please, counsel for the protestants has just exhibited to me a copy of a communication which he has transmitted to the Bureau of Motor Carriers of the Interstate Commerce Commission, in Washington, formally submitting a motion which he filed with the [fol. 555] Board yesterday maintaining that this proceeding has been improperly assigned to a joint board. In that motion, as transmitted to the Bureau, he makes the following statement: "That the several applications have been improperly and arbitrarily separated and divided in order to confuse the issue." That, of course, is a statement to which we take the most vigorous exception; and in order to clear the record I should like to recall Mr. Stanley for just a brief statement explaining the reason why these applications were separately filed.

Chairman Darby: All right, sir.

W. L. Stanley was recalled and testified further as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, you heard my preliminary statement. Will you explain to the Board why we filed these applications separately rather than together?

A. The filing of the applications separately was because of the operation of train service in the various territories that are covered by the applications, our purpose being to co-ordinate in each operating territory the train and truck service. Speaking of the three applications that are before this Board, one is exclusively on the North Carolina Division of our railroad. That is the one from Hamlet to Columbia. It includes two subsidiary lines of the Sea- [fol. 556] board—the C. & L. and the C., M. & C. Another application is exclusively on the South Carolina Division of the railroad. (I refer to the one from McBee to Sumter.) And the third is exclusively on the South Carolina Division of the railroad, being the one between Gaston and Garnett. Now, in each of those territories—from Hamlet to Columbia, from McBee to Sumter, and from Gaston to Garnett—you have what I might call a subdivision of

the railroad so far as the operation is concerned. You have not any through train service, to illustrate, from Hamlet, North Carolina, to Sumter, South Carolina. You have not any through train service from Hamlet, North Carolina, to Garnett, South Carolina. The primary purpose in filing these applications as they were filed was in order to co-ordinate the proposed truck operation with the movement of the trains in the territory where we sought authority to operate the trucks.

Q. And there was no intention, as stated in the motion of counsel for the protestants, to confuse the issues or to conceal our purpose or intent?

A. Absolutely no. In my opinion there would have been more confusion had we sought to get this authority in one application.

Q. Because it would not have disclosed exactly the kind of operation we propose?

A. No, sir.

[fol. 557] Cross-examination.

By Mr. Watkins:

Q. Mr. Stanley, are you willing for these applications to be limited so as to prevent the interchange of traffic moving under the various applications from one truck service to another?

Mr. Abeles: I have already answered that question several times, Mr. Watkins. I have no objection to the witness' answering it again.

A. I am not willing that that be done, because, as has been testified by another witness, there may be occasion where, for the purpose of expediting freight, it would be desirable to transfer a shipment from one truck to another, although that would be the exception rather than the rule.

Mr. Self: I think his question there would include also whether or not you intend to run trucks from one of these proposed sections affected by one application to another section.

The Witness: We do not intend to run trucks from one section into another section. The only possible thing that we might do would be occasionally to transfer from one truck in one section to another truck in another section.

Mr. Self: You would not run a truck from Richmond, Virginia, to Columbia, South Carolina?

The Witness: No, sir; that is not contemplated.

[fol. 558] By Mr. Watkins:

Q. Would you be willing for your applications to be so limited as to preclude that?

A. I think the applications themselves already are limited.

Q. Would you be willing for the Commission to so construe your application?

A. My own opinion about the matter, Mr. Watkins, is this: that when we get authority to operate a truck from Hamlet to Columbia, for instance, that operation, under the certificate that may be granted, would be limited to that territory; and in like manner the operation of the truck from McBee to Sumter would be so limited.

Q. And are you desirous of the application being limited in that way?

A. I think they would limit themselves. A certificate granted from Hamlet to Columbia is going to cover the operation of a truck from Hamlet to Columbia, as I see it. I do not think we would have any right, for instance, to operate a truck from Hamlet to Sumter, South Carolina—the same truck. I might add, if you will pardon me, Mr. Commissioner, we have no intention of doing so.

The Chairman: In case you were running your truck from Columbia to Hamlet and when you arrived in Hamlet with your truck you found that the truck going from Hamlet to other points had broken down, what would be your attitude toward running the same truck on?

[fol. 559] The Witness: I think under this arrangement we would have a relief truck there. That is what we propose to do. I can conceive, Mr. Commissioner, of an extreme case where we might take that truck and operate it into other territory, but as a rule that would not be done.

The Chairman: I am like you; I think the application itself limits the truck as to where it can operate.

Mr. Abeles: I might interject at that point it seems to me that so far as any interest that the protestants might have in these proceedings it would be a matter of no concern to them whether we operate the truck over more than

one of the routes or operate separate trucks. If, for example, in the instance that you have cited we found in an emergency that it would be necessary to use the Columbia-Hamlet truck for the Hamlet-Wilmington service, what concern is it of the protestants if we run that truck through rather than use another truck? It is the service itself, it seems to me, in which they are interested and not the equipment which is used.

The Witness: I may add this, if I be permitted, that we have planned, subject, of course, to favorable action by the Commission, to purchase separate and independent trucks for each of these routes.

Exam. McCaslin: Mr. Stanley, you are the officer of the corporation who prepared and signed some eight applica- [fol. 560] tions that the Seaboard now has pending?

The Witness: I am.

Exam. McCaslin: Are the schedules, in so far as the connections and the termini of the various routes applied for, so arranged that the trucks running on the different sections will connect rather closely?

The Witness: Such a purpose in the preparation of those schedules, Mr. Examiner, was not in our minds at all when the applications were filed. Whether or not it would be possible, under these various schedules, to make that connection I do not know and could not know unless I examined those schedules.

The Examiner: I had in mind this sort of situation. Suppose a shipment which would ordinarily be carried by truck rather than by train, originating at some point between Columbia and Hamlet, were destined to a point between Hamlet and Raleigh, which would also be the sort of less-carload traffic which you contemplate moving by truck as to both destination and origin point, would the schedules permit of the shipment's arriving in Hamlet (which is the transfer point or the terminal point of each of those proposed routes) at such a time that it could be expeditiously transferred from the Hamlet-Columbia truck to the Hamlet Raleigh truck?

The Witness: Without having those schedules in my [fol. 561] mind (I would have to check up on those), I would say this: Assuming you get a shipment at Bethune, South Carolina, which is a local station between Hamlet and Columbia, going to Cameron, North Carolina, which

is a local station between Hamlet and Raleigh, now I should say that in that instance, regardless of the schedule, that shipment would be handled by truck from Bethune to Hamlet and then by truck from Hamlet to Cameron.

Exam. McCaslin: That is what I wanted to know.

The Witness (Continuing:) Because we have no train service in either of those territories, and even if it had to stay at Hamlet for ten hours I think the movement would be made that way.

Exam. McCaslin: That is all.

Mr. Abeles: That would not be for the purpose, I take it, of substituting truck service for rail service but because that is the kind of shipment which adapts itself to the purpose for which we are establishing this truck service—is that correct?

The Witness: That is absolutely correct, and I took those two small places because we are assuming that there will be no cars picked up or set off at either of those points, and the service we shall have will be truck service.

Chairman Darby: We have gotten to the point where we are hearing another bunch of applications. Let's confine [fol. 562] our hearing here entirely to the application that is before us—from Columbia to Hamlet.

I shall ask Mr. Self to make a statement with reference to Mr. Watkins' motion filed yesterday.

Mr. Self: With reference to Mr. Watkins' motion filed yesterday referring to the consolidation of this and other cases pending before the Interstate Commerce Commission that have been referred to other boards, this Board is No. 177, and we must deny the motion made for the reason that the other cases are not before us. We can not consolidate them. Therefore we will proceed to take the evidence in the case before us and let the folks in Washington consider your motion there, to consolidate; and we will refer to it in any order we issue in this case.

Mr. Watkins: May I make this motion, Mr. Commissioner?

Mr. Self: Yes, sir.

Mr. Watkins: I make a motion that this hearing be adjourned until the Commission has had opportunity to pass upon our motion to consolidate.

Chairman Darby: Mr. Watkins, I am going to deny that motion, upon the grounds that the Board has orders to

hear this case for the Interstate Commerce Commission. I think the Commission, before they ordered the Board to hear this case, knew what they were talking about. I [fol. 563] think they threshed it out thoroughly before they gave the order. If the Commission see fit to hear the entire group of applications at one time, they can do so. The Commission have gone to the expense of ordering this hearing, and they have people here. We are going to continue to take the testimony, and if they see fit to deny your motion they will still have the testimony before them.

I wish to say here, let's confine ourselves to testimony on this application that is before us. We will take care of the other hearings when they come before the Board, and let's confine our remarks solely to the application that is now before us, and not interject testimony about the operation in Virginia, for instance. I did not even know they had an operation or an application for operation pending in Virginia until it was brought out here. We have gotten into a wrangle here and have been talking about the operation from Sumter to McBee and from Hamlet to Raleigh, and even from Gaston to Garnett. Let's confine ourselves to testimony on this one proposed application that is now before us.

Mr. Watkins: May I enter my objection to the decision of the Board on all three points: That is, the denial of the motion to consolidate, the motion to adjourn, and the ruling that we must confine our testimony to the application before the Board at the present time?

[fol. 564] The Chairman: Note his objections there.

Mr. N. A. Turner: May I say something off the record?

The Chairman: Off the record.

(Mr. Turner made a statement which was followed by a general discussion, all outside the record.)

Chairman Darby: On the record.

Mr. Watkins: In view of the three rulings of the Joint Board, to which exceptions have been noted, the interveners represented by me do not desire to put in any testimony at this time but insist upon consolidation, and if the cases are consolidated they will put in testimony at that time.

Mr. Darby: Have you anything to say on that, Mr. Abeles?

Mr. Abeles: I should like, in response to that statement of the intervener, to request the Board to insist upon the

interveners' proceeding with such evidence as they may have with respect to this particular proceeding at this time, for the reason that I stated yesterday, that if the Commission should decide that the motion for consolidation be overruled, it will then have before it the entire record. In the alternative, if counsel for the interveners refuses to proceed, I request that the record be considered closed and that no further opportunity for the submission of evidence by the intervener be granted. In other words, if the Board please, I have had similar experience in other cases where [fol. 565] questions regarding the procedure have arisen in the course of the hearing; and invariably the ruling of the examiner or the board, as the case may have been, has been that the evidence be taken and that the Commission will rule upon the procedural question when the matter comes before it. If the intervener is permitted at this time to hold in abeyance his evidence, pending the ruling of the Commission on the motion, then we shall be put to the inconvenience and expense of having our witnesses present at the time and place when he does put in his evidence.

The Chairman: Gentlemen, I think the only thing to do is to proceed with the case. If Mr. Watkins has no witnesses to put on, and the Commission sees fit to deny his motion, why then the case is closed. They have had their day, and the case is closed on the evidence that is in it. The Board, of course, is not going to insist that he put in evidence, but if the Commission should rule against him on the motion then the only evidence will be that put in by the applicant.

Exam. McCaslin: I believe Mr. Callahan wishes to make a statement.

Mr. Abeles: When I asked that the case be closed I meant, of course, Mr. Watkins' case.

Chairman Darby: Mr. Callahan, we will hear from you at this time, if you will be sworn now.

[fol. 566] WILLIAM T. CALLAHAN was sworn and testified as follows:

The Witness: My name is William T. Callahan, and I live in Charleston, South Carolina. I am a representative of the Brotherhood of Railway Trainmen.

Mr. Commissioner, our position in this matter is that we have fought motor-truck and motor-bus transportation up and down the highways of South Carolina for about nine years; and, to get the record straight, we can not fight the independent carriers and smile upon the Seaboard's putting in station-to-station service. The local freights operate, and I believe the service—I am speaking from a record—I believe it is the practice of railroad companies to load trap cars. When you take and put these motor carriers on the highways you are taking away from the railroad employment to the extent of overtime. That is the situation, and that is the only protest we are offering. We don't know where we stand on the situation, and we don't know what type of employees will be hired to operate these motor carriers on the highways. In other words; there are four branches of the service—I am speaking for one; there are four branches of the service, and there is no question in my mind but some of the service is going to be curtailed, so far as the operation of local freight trains is concerned. Another thing that we want to get [fol. 567] straight in the record is it don't seem plausible to us, when you have got a local freight line operating on the highways and pay a man $110 a month, that when it comes to curtailing the service they are not going to operate right on the highways and cut off the local freight, because an engineer makes on a local freight—an engineer on a round trip would make around $14, the fireman make around $12, the conductor make around $12, and you would have two brakemen—you have five men in that outfit that would make over $100 on a round trip; and it don't seem to us that where you have a truck operating on a highway for $110 a month you would keep those men on.

I have got this information—that the Seaboard's policy has been to give the furloughed employees the preference of these runs. Is that correct?

Mr. Abeles: I can not speak authoritatively, but I have the same information.

The Witness: I have that information, and all I have to say is that we are protesting this service on the basis that it is going to curtail rail employees' employment.

Mr. Self: Do you think it would save railroad all its overtime paid to employees in that territory?

The Witness: Well, if they operate the local freights in switching only and through freight, in these communities

where they have switching service, naturally this service on the highways is going to eliminate the local man from [fol. 568] making his overtime. That is the only protest we enter against it.

The Chairman: Any questions, gentlemen?

The Witness: In other words, Mr. Commissioner, we are in a position where we don't know where we stand on the whole issue, because if the Seaboard puts in this plan, gentlemen, the other trunk lines in the state will do likewise; and we are not altogether satisfied with the whole move on the basis that it is going to curtail our train-service employees to an extent that they are going to suffer in the long run. Of course, it is a happy thought to them that they are going to give the train-service employees the positions on these trucks, but there is a big difference in $110 a month and what the usual salary of a train-service employee is.

That is the only basis on which we are making the protest.

Cross-examination.

By Mr. Abeles:

Q. Mr. Callahan, you are the representative of the Brotherhood of Railway Trainmen, are you not?

A. That is correct.

Q. At Charleston.

A. Yes, sir. We have 640 men in the state involved in train service.

Q. The particular operation involved in this proceeding would affect the employees only on the North Carolina [fol. 569] Division?

A. Well, your policy, I believe, is generally to parallel the lines.

Q. Yes, sir, but let's confine ourselves to this case, if we may, for the present.

A. Well, we can not confine ourselves to the case, because after you have established a precedent——

Q. I understand what your general attitude is, and I think you have stated it very clearly; but, so far as this particular proposed service is concerned, it would affect the trainmen on the North Carolina Division only, would it not.

A. You propose in this line from Hamlet to Columbia—that is an interstate movement?

Q. Yes.

A. I am not familiar with the Seaboard set-up, but I guess that is one of their main lines.

Q. Yes, that is one of the main lines.

A. Well, I don't know what service you have got up there, but certainly it would affect your local freight service between Hamlet and Columbia.

Q. That is on the North Carolina Division; I state that to you, if you do not know. Have any of the Seaboard employees on the North Carolina Division expressed themselves to you in opposition to this proposal?

A. No, because North Carolina is out of my jurisdiction. [fol. 570] You can not confine your argument to North Carolina——

Q. I am not arguing now; I am simply asking certain questions. I do not want to foreclose you, but I do want to keep the record straight.

A. I do believe that the employees of North Carolina, when you meet in Raleigh, you will find the same opposition that you meet here in Columbia.

Q. That is pure surmise. I want to get some specific answers to specific questions.

A. I am confident you will find the same opposition.

Q. That is pure surmise; we have not reached that case yet.

A. You are talking beyond this——

Q. Just a moment. You are familiar, I suppose, with the fact that on railroads generally, and on the Seaboard specifically, local train service has been very sharply curtailed during the past few years, are you not?

A. I disagree with you on that, for the simple fact that the local freights that were operating triweekly on any trunk line in South Carolina are operating on a daily basis today.

Q. But there has been a great deal of local freight service which used to be carried by the railroads that is not carried by them today—isn't that correct? (I should make that clear, that I am speaking of the amount of less-carload traffic carried by the railroads rather than carloads.) [fol. 571] A. Well, the amount of less-carload traffic on the trunk lines today is curtailed to the extent that the local motor lines have taken that business.

Q. All right. Speaking for your organization, I am not entirely clear why—granting that the railroad will employ

furloughed employees for the additional service such as we are here proposing—you are opposing the proposal, which, under the assumption that I make, will give employment to a larger number of ex-railroad employees. I say, assuming that to be the case, I am not clear why you are opposing that result.

A. Well, we are opposing the situation on this basis; when you hire a man to drive a truck for $110 a month you are not taking care of the situation. In the first place, this $110 man has no status whatever with regard to a contract—is that correct?

Q. I can not answer that question, but let's assume that to be the case.

A. Well, if he were a trainman he would be paid standard wages or prevailing wages for local freight.

Mr. Self: How much would that be a month?

The Witness: Well, I would judge, offhand, and at a rough estimate, that a man in local freight service—a brakeman, for instance—would make better than $200 a month.

[fol. 572] Mr. Self: How many of your 640 members of your Union have not been called for a long period, say within sixty or ninety days?

The Witness: Well, I would imagine—I am not in position to say who has been called to operate these trucks, because I have not got the available information.

Mr. Self: I mean on the railroad; how many are out of employment?

The Witness: Well, at the present time I am happy to say that very few of our fellows are out of employment. On account of the truck movement and the fertilizer movement and the general pick-up in business conditions, very few of our fellows are out of service.

By Mr. Abeles:

Q. Let me put it this way, Mr. Callahan. If this application is denied, and you are appearing here in the effort to have it denied, I take it, will it mean the employment of any additional trainmen by the railroad?

A. No, because it would mean additional employment on this basis. A local freight——

Q. I am just asking you whether it would mean the employment of any additional emlpoyees.

A. Well, it will have this effect——

Q. I don't want to interrupt you, but I do want an answer.

A. It would not have any additional employment, but it would have the effect of curtailing overtime.

[fol. 573] Q. Then, Mr. Callahan, is it a fair statement of the position which you are here urging before the Board to say that, in order to save the additional compensation which the members of your organization would earn through overtime, you would be willing to prevent the employment of the additional men that would be required for the operation of this truck service if the application is granted, thus spreading employment?

A. Well, I am going to ask you this question——

Q. No, I don't want you to ask me questions; I am not on the witness stand. I am asking you to answer my question. Just a moment; did you understand the question?

A. Yes, sir.

Q. I ask you to answer it.

A. I will say this—the type of employment that you are going to put in the service, we are absolutely against it.

Q. Even though it provides employment for ex-service men?

A. Yes, sir.

Q. Mr. Callahan, you are familiar, of course, with the terms of employment of the members of your organization, are you not?

A. I hope so.

Q. Will you describe to the Board on what basis they are employed, with respect to hours of service and pay, in local freight service?

[fol. 574] A. I would not be in position to say that offhand, because I haven't got the schedules with me, but a man on local freight service works on a mileage basis.

Q. What is that basis?

A. Well, I think the local freight rates are about $5.36 per hundred miles.

Q. Express it in terms of miles and hours, if you can, for a day's work. Do you know what the basic pay is?

A. A local freight man gets $5.36 for 100 miles.

Q. Within how many hours?

A. Within eight hours. If his run runs over eight hours, why naturally he gets time-and-a-half overtime.

Q. And if his run exceeds 100 miles he gets what?

A. He gets additional mileage. I haven't got the schedule with me, and I am not prepared to make a statement on that basis.

Q. Suppose he runs only 75 miles?

A. Well, he gets paid for his hundred miles.

Q. An entire day's wages?

A. That is right.

Q. Is there any guaranty as to the number of days per month for which he shall be paid?

A. No. The average local freight man runs about 25-½ days per month.

Q. Is he guaranteed that?

[fol. 575] A. Well, you know there is a mileage limitation. I am speaking for one branch of the service, now; I am speaking for the trainmen.

Q. That is all I am asking you to speak for.

A. The engineers have got a mileage basis.

Q. Speaking of the trainmen.

A. They work 25-½ days a month.

Q. And if they actually work less than that, they get paid for 25-½ days?

A. Yes, if they are in the service they get paid for it.

Q. So if they are in the service they are secure of the payment of a definite amount for any one month, are they not?

A. Well, absolutely, yes.

Q. Then, simply to summarize what you have said, Mr. Callahan, it is your position that if, by the establishment of the auxiliary truck service which we are here proposing, the trainmen are deprived of the overtime which they might otherwise earn you are opposed to the proposal?

A. I am not opposed to it on an overtime basis, but the situation involved is this; you will want to curtail train service, when the situation arises; you will annul a train if you have provisions for highway transportation. You are going to keep the truck service in operation.

Q. If we do not eliminate any train-service as the result [fol. 576] of the establishment of this motor-carrier service, would you be opposed to the application?

A. Provided we had the assurance that you would not curtail train service in preference to motor-truck transportation, no, we would not oppose it.

Q. I am trying to get your position clear. At the outset of your testimony you stated that the basic ground for your opposition was the fact that the earning of overtime by local trainmen was threatened?

A. That is correct.

Q. Now you say that your opposition is based upon the possibility of the elimination of trains?

A. That is correct.

Q. Now, which ground do you choose to stand on?

A. I stand on both of them.

Q. Are your trainmen in local freight service not guaranteed 25-½ days per month?

A. If a man stands for a run—I will answer you like this; if a man stands for a run—no trainman is assigned to a run. They bid on those jobs.

Q. All right.

A. If he is in service, and that run becomes open, he runs on that run. There is no guaranty of any specific number of days. The average local freight man, I believe, will average 25½ days a month. Is that clear now?

[fol. 577] Mr. Abeles: No, it is not clear to me, but we will let it go at that.

That is all, Mr. Callahan.

Chairman Darby: Is there anything further?

Mr. Abeles: May it please the Board, I should like to move that those parts of the application which are of an evidentiary character be considered a part of the record in this proceeding.

Off the record.

(Mr. Abeles made a statement off the record.)

The Chairman: On the record. Is there any objection?

Mr. Watkins: I see no objection.

The Chairman: Without objection, they will be so considered.

The applicants have rested?

Mr. Abeles: Yes, sir.

Chairman Darby: Do the protestants rest?

Mr. Watkins: Yes, sir.

The Chairman: No further evidence will be offered by anyone.

Do you desire to file briefs in this case?

Mr. Abeles: Mr. Chairman, I understand that this is a recommended report case. We prefer in such cases to [fol. 578] defer briefs until after the proposed report is considered. At that time, I understand, if we so desire we shall have opportunity to file exceptions and supporting brief?

The Chairman: That is correct.

Mr. Watkins: In behalf of the intervener, in consideration of the motion to consolidate it is quite probable that I shall wish to file a brief on legal points as to the right of this Board and other boards to consider these applications piecemeal. In view of the fact that they are now before boards and there is no general jurisdiction, it will probably be necessary to file brief in each case.

The Chairman: Do you wish to file brief in this case?

Mr. Watkins: Only on the legal points raised in my motion.

Mr. Abeles: In advance of the recommended report of the Board?

Mr. Watkins: Yes, sir.

Mr. Abeles: Mr. Chairman, in view of the statement by counsel for interveners, we, of course, desire to file a brief on that same question, understanding that it will not go to the merits of the case but to the procedural issue raised by the motion of counsel for intervener.

Mr. Watkins: To a certain extent, now, Mr. Abeles, this does go to the merits of the case. But I may say that [fol. 579] the purpose I have got in filing this brief is to try to stop this method of procedure. Now, naturally some of the evidence that has been taken here will be involved. To that extent it might go to the merits. I don't know.

Mr. Abeles: By my statement I meant that you will not direct your opening brief, or the brief which you might now file, to the question of public convenience and necessity. Is that correct?

Mr. Watkins: I can not even agree with that, because when you consider the fact that you have eight applications here which we think should be considered jointly the question of convenience and necessity might even creep into a brief on that subject.

Mr. Abeles: May I suggest this, Mr. Chairman? We have not, of course, the benefit of the formal motion filed

by Mr. Watkins with the Commission. I understand that he will furnish us with a copy of that?

The Chairman: And will again file it formally with the Commission, I understand, in addition to the telegraphic submission.

Mr. Watkins: Undoubtedly I will file it.

Mr. Abeles: And the brief which you will file will be directed to that motion, embracing, of course, such collateral matters as you may consider necessary for the argument on that motion?

[fols. 580-581] Mr. Watkins: That is true. Of course, you have to consider this point—that there are these other hearings pending.

Chairman Darby: The briefs will be filed simultaneously and must be in by July 12th.

If there is nothing further, the hearing is closed.

(Whereupon the hearing was closed, at 10:45 a. m., Saturday, June 12, 1937.)

[fol. 582] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC 86687 and Docket No. MC 86687, Sub. No. 1

Application of LEGH R. POWELL, JR., and HENRY W. ANDERSON, Receivers of Seaboard Air Line Railway

Columbia, South Carolina, June 11, 1937. 9 a. m.

Before Joint Board No. 177 (J. C. Darby, South Carolina Public Service Commission)

Also Present: Examiner W. W. McCaslin.

Met pursuant to notice.

APPEARANCES:

Chas. T. Abeles, 319 Seaboard Air Line Railway Building, Norfolk, Virginia, appearing for Applicants.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, appearing for Southern Motor Carriers' Rate Conference, Intervener.

N. A. Turner, Columbia, South Carolina, appearing for New South Express Lines, Intervener.

[fols. 583-584] Proceedings

Docket No. MC 86687

Friday, June 11, 1937, 9 a. m.

Chairman Darby: The Interstate Commerce Commission has set for hearing at this time and place Docket No. MC 86687, before Joint Board No. 177. This is the application of the Receivers of the Seaboard Air Line Railway for a certificate of public convenience and necessity (Form BMC 8, new operation) authorizing a new operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina, between Gaston and Garnett, South Carolina.

This case will be taken up and proceeded with upon the conclusion of the hearing on Docket No. 86687, Sub. No. 3, which is being heard by Joint Board No. 2.

All persons interested in this case should remain here, in order that they may be ready to proceed at the conclusion of the other hearing.

(Whereupon, adjournment was taken until conclusion of the hearing on Docket No. 86687, Sub. No. 3.)

[fol. 585] Docket No. MC 86687—Sub. No. 1

(Friday, June 11, 1937. 9:05 a. m.)

Chairman Darby: The Interstate Commerce Commission has set for hearing before Joint Board No. 177, at this time and place, Docket No. 86687, Sub. No. 1, the application of the Receivers of the Seaboard Air Line Railway for a certificate of public convenience and necessity to extend its present operation, authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina between McBee and Sumter, South Carolina.

This case will be proceeded with upon the conclusion of the hearing, set for this same time and place, of Docket No. 86687, Sub. No. 3, and Docket No. 86687.

All persons interested in this case should remain here or arrange to be here upon the conclusion of the two cases just announced.

(Whereupon, adjournment was taken until the conclusion of the hearing of Docket No. 86687, Sub. No. 3, and Docket No. 86687.)

[fol. 586] Docket No. MC 86687—Sub. No. 1

Friday, June 11, 1937, 3:30 p. m.

Chairman Darby: The Joint Board No. 177 finds that it will very obviously be impossible to hear the last Seaboard Air Line Railway case (that is, Docket No. MC 86687, Sub. No. 1) today, and that case is continued until tomorrow morning at this same place, at nine o'clock.

All witnesses and other interested parties are excused until that time.

(Whereupon, adjournment was taken until Saturday, June 12, 1937, at 9.00 o'clock a. m.)

[fol. 587] Docket No. MC 86687

Friday, June 11, 1937, 5 p. m.

Chairman Darby: The hearing on Docket No. MC 86687 is adjourned until tomorrow, when it will be taken up at the conclusion of the hearing on Docket No. 86687, Sub. No. 3.

All persons interested in this case may be excused until tomorrow. They should arrange to be present then at the conclusion of the hearing on the other docket.

(Whereupon, adjourned until Saturday, June 12, 1937, until the conclusion of hearing on Docket No. MC 86687, Sub. No. 3.)

[fol. 588] Docket No. MC 86687—Sub. No. 1

Saturday, June 12, 1937, 9.00 a. m.

Chairman Darby: The hearing on Docket No. MC 86687, Sub. No. 1, which was continued yesterday afternoon until nine o'clock this morning, will be held by Joint Board No. 177 at the conclusion of the hearing by Joint Board No. 2 on Docket No. 86687, Sub. No. 3, which hearing is now in progress.

All witnesses and other parties interested in Docket No. MC 86687, Sub. No. 1, are instructed to remain here in

order that they may be ready when this case is taken up later this morning.

(Whereupon, adjourned until the conclusion of the hearing on Docket No. MC 86687, Sub. No. 3, before Joint Board No. 2.)

[fol. 589] Docket Nos. MC 86687 and MC 86687, Sub. No. 1

Saturday, June 12, 1937, 11.00 a. m.

Chairman Darby: The interstate Commerce Commission has set for hearing at this time and place Docket No. 86687 and Docket No. 86687. Sub. No. 1, applications of the Receivers of the Seaboard Air Line Railway for certificates of public convenience and necessity authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of South Carolina, between Gaston and Garnett, South Carolina, and between McBee and Sumter, South Carolina. The two cases have been continued since yesterday until the conclusion of the case which Joint Board No. 2 has just heard. These two cases are both set for hearing before Joint Board No. 177. The issue of the fitness, willingness, and ability of the applicants in each case properly to perform the service is common to both cases. The issues of public convenience and necessity in each case, of course, are separate and must be considered separately, since they are, under the applications, two separate operations. The Board feels that considerable time can be saved for all the parties and expense to the parties and to the Interstate Commerce Commission by consolidating the two cases for hearing, by reason of the common issue of fitness, willingness, and ability.

Do counsel have any statement to make in regard to [fol. 590] the consolidation as proposed by the Board?

Mr. Abeles: Yes, Mr. Chairman. For the limited purpose, as just described by the Commissioner, and with the understanding that from the consolidation there will arise no implication that the two operations covered by the two applications have any connection whatsoever and that on the issue of public convenience and necessity they will be considered and decided separately, we agree to the Chairman's proposal.

I wish also to make this further statement in connection with Docket No. MC 86687, which is the proceeding covering the service from Gaston to Garnett. Some two weeks ago, on behalf of the applicants, I filed with the Commission an application on Form BMC 6, seeking the registration of this service; and to that application I appended a statement explaining to the Commission that we had theretofore filed our application on Form BMC 8 for a certificate covering this same route and that, notwithstanding the filing of the certificate application, we considered (for the reasons explained in the statement) that the applicants are entitled to registration and that under the provisions of the Federal Motor Carrier Act no certificate is required. I also requested that the application for registration be consolidated with, heard by (if hearing was necessary), and disposed of by the Commission at the same time as the [fol. 591] hearing upon the certificate application in this docket. I followed up that request with telegraphic communication with the Commission requesting that we be advised, if possible, of the Commission's action upon that request. Up to this time I have received no reply from the Commission, and accordingly I renew that request at this time.

Chairman Darby: The Board has instructions only to hear the applicants on Form BMC 8. That is the only information we have, so we will proceed on that.

Mr. Abeles: I presume our request will be acted upon by the Commission when a formal disposition is made of this case.

The Chairman: Who appears for the applicants?

Mr. Abeles: Charles T. Abeles for the applicants in both dockets.

The Chairman. Who appears for the interveners?

Mr. Watkins: Edgar Watkins, Jr., appears for the Southern Motor Carriers' Rate Conference; and N. A. Turner appears for the New South Express Lines, in both dockets.

The Chairman: Have you filed formal petition of intervention in these cases?

Mr. Watkins: Formal petition of intervention has been filed on behalf of the New South Express Lines, and I now file one on behalf of the Southern Motor Carriers' Rate Conference.

[fol. 592] Mr. Abeles: That covers both the cases?

Mr. Watkins: Yes, sir. I put them both on the same form.

The Chairman: Will you state your position on the record, Mr. Watkins:

Mr. Watkins: Yes, sir. I have not seen a copy of the application on BMC Form 6, for registration, referred to by counsel for applicant. I disagree, however, with his interpretation of the law that even though a certificate has been granted by the State of South Carolina it is unnecessary to proceed with the hearing before the Interstate Commerce Commission on the interstate features involved. The applicants have filed with the Commission applications under Dockets MC 86687 and Sub Numbers 1 through 7, forming eight separate applications, under which applications, apparently, by virtue of the testimony given by applicants in Docket 86687, Sub No. 3, heard by Joint Board No. 2 yesterday, the applicants intend to a certain extent to perform through truck service or through truck and rail service between all points covered by all applications. If Section 205b of the Motor Carrier Act is construed as covering operations by both rail and truck, these applications would involve operations in more than three states and should be heard by an examiner. If the Section 205b refers only to motor-carrier operations of a rail applicant, then the applications involve operations in three states—the states [fol. 593] of Virginia, North Carolina, and South Carolina —and under the law should be heard by a joint board composed of representatives from those three states. Thus I move that these cases be cancelled for hearing, as the hearing before this Joint Board is illegal, and that they be consolidated for hearing with the other cases under the sub numbers dockets and be heard n a legal manner.

I also urge, as grounds for this motion, the fact that the various joint boards before which these cases are set can not clearly understand the entire issue by trying the applications piecemeal and that in order for the Commission to be fully informed as to the effect of each of these applitions and of all of them as a whole such consolidation is necessary.

Mr. Abeles: Mr. Chairman, I should like to ask counsel for the interveners whether he will file a brief on that question in this proceeding. My purpose in asking that ques-

tion is that, if he proposes to do so, I see no purpose in stating my position fully at this time other than to say that we, of course, oppose the motion.

Mr. Watkins: It is the intention of the interveners to formally request the Commission to consolidate all the cases referred to, for hearing, and in support of such motion a brief will be filed. I presume that that would be [fol. 594] considered a brief in this case, as well as in the other cases involved.

Mr. Abeles: I presume that it would be unnecessary to file separate briefs (that is, physically separate briefs) in each proceeding on this specific point but that a brief can be addressed to the Commission as a brief in all of these cases?

Exam. McCaslin: Off the record.

(Short discussion, outside the record.)

Mr. Abeles: In view of counsel's explanation I will not at this time state our position on that motion except, as I say, that we oppose it, and I will reserve argument for the brief.

The Chairman: I take it that all persons appearing as counsel in this case have applied for admission to practice before the Commission or have been admitted to practice?

Mr. Abeles: I have been admitted.

Mr. Watkins: I have been admitted.

Mr. Turner: So have I.

Chairman Darby: No free copies of the transcript in this case will be distributed. Persons desiring copies will order them from the reporter.

Mr. Abeles: Off the record.

(Short colloquy between counsel, outside record.)

[fol. 595] Chairman Darby: On the record.

Mr. Watkins, your motion to dismiss this hearing involves other hearings with which this Board has nothing to do. This Board can not dismiss a hearing on account of some other hearings that other boards in other states will hold at some time in the future. This hearing has been assigned to this Board by the Interchange Commerce Commission, and any change in the order will have to be made by the Interstate Commerce Commission. So I am going to deny your motion and proceed with the hearing.

Mr. Watkins: Mr. Commissioner, I want to note an exception to that ruling and also move that this hearing be postponed until such time as the Commission has an opportunity to pass upon my motion.

The Chairman: I am going to have to deny that motion also, Mr. Watkins, for the same reason that I stated before. I think the Interstate Commerce Commission probably has looked into this matter before it assigned this hearing to this Board; and I do not think this Board would have a right, under an order from the Interstate Commerce Commission, to postpone a hearing unless officially notified by the Interstate Commerce Commission.

Mr. Watkins: May I have an exception noted to that?

The Chairman: Yes, sir.

Mr. Turner: I, N. A. Turner, appearing for the New [fol. 596] South Express Lines, have a formal petition of intervention, serving all parties, which petition states our position. Inasmuch as the cases have been consolidated, I should like to amend the petition to apply to both docket numbers that are being heard at this time.

Mr. Abeles: Mr. Chairman, the formal petition for intervention filed by the New South Express Lines, Inc., is confined to Docket MC 86687, Sub No. 1, involving the McBee-Sumter route. Do I understand now that the intervener in that proceeding is opposing the application in Docket MC 86687?

Mr. Turner: That is right.

Mr. Abeles: Have you any operations in that territory?

Mr. Turner: I don't think that is pertinent. Frankly, whether we have an operation there or not may go to the basis of it later, but at this time I do not feel called upon to answer.

Mr. Abeles: The reason I ask that question, Mr. Chairman, is that intervention is a privilege and not a right, and I think that there must be some statement by the intervener of his interest in the proceeding before he is allowed by the Commission to participate as a party in the case. If it appears that there is no such interest, in a substantial sense, I wish at this time to object to the intervention. I state that because the original petition for intervention [fol. 597] was filed only in Docket MC 86687, Sub No. 1; and I presume if at the time of the filing in Docket MC 86687, Sub. No. 1, this intervener had any interest in this proceeding it would have filed a formal petition for inter-

vention at that time or along with its intervention in the other proceeding. In other words, I am simply trying to clear the case of any unnecessary complications.

Mr. Turner: I don't think my friend has any right to assume what my interest is. If the petition is faulty or insufficient, the Commission will rule on it. I move that I be allowed to proceed under it.

Mr. Abeles: I think I have the right to inquire at this time, since the petition for intervention was not filed in advance but at the opening of the hearing—a practice which, I believe, is allowed by the Commission's rules—I think I should be permitted to inquire what his position is.

The Chairman: I think you should explain what your position is, Mr. Turner.

Mr. Turner: We just withdraw the petition, then. We did not file it in the first place and just filed it on the Commissioner's recommendation.

Mr. Abeles: Let me make it clear, for the record, that the two hearings are consolidated for the limited purpose of receiving evidence as to the fitness, willingness, and ability of the applicants to perform the service. As to the [fol. 598] issue of public convenience and necessity, the two cases are to be considered, according to my understanding and certainly on my insistence, just as separately as if two separate hearings were had. Is that right, Mr. Chairman?

The Chairman: Yes, sir.

Mr. Turner: In order not to prolong the matter, we moved to intervene in both docket numbers, and then, in order not to prolong the matter, we moved to withdraw from one. Since we do ask to intervene in one, we state that we are a common carrier by motor truck, that we do operate service in the territory covered by the proposed operation, and that we do oppose the application of the Seaboard Air Line Railway to operate trucks in the territory, on the ground that there is no public convenience and necessity for such operation.

Mr. Abeles: I accept that statement, reserving the right at the termination of the hearing to move that the Board strike the intervention in the event the evidence does not affirmatively show the interest in Docket MC 86687 which would qualify the intervener to intervene under the Commission's rules.

The Chairman: The reservation will be noted, and the intervener will be permitted to intervene.

Mr. Watkins: I represent the Southern Motor Carriers' Rate Conference, which is composed of over four hundred motor carriers operating in Southern territory, many of [fol. 599] which parallel the lines that are requested in these applications and many of which parallel and maintain motor-carrier service in the general area affected by all the applications of this applicant. We oppose the granting of these applications upon the ground that there is no public convenience and necessity for such operation.

Mr. Abeles: Shall I proceed?

Chairman Darby: Yes, sir.

Mr. Abeles: I call Mr. Sauls.

C. H. Sauls was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Sauls, please state your name, residence, and occupation.

A. C. H. Sauls, Division superintendent, Seaboard Air Line Railway, South Carolina Division; Savannah, Georgia.

Q. Mr. Sauls, you have been called to testify regarding the application of the Receivers of the Seaboard Air Line Railway for a certificate authorizing the establishment of truck service between Garnett, South Carolina, and Gaston, South Carolina, in Docket MC 86687. How long have you been superintendent of the South Carolina Division?

A. Very near three years.

Q. Are you thoroughly familiar with transportation conditions in the territory covered by this proposed truck service?

[fol. 600] A. I am.

Q. Will you now describe what we propose to do?

A. We propose to put in truck service for the smaller stations between Garnett and Gaston, South Carolina, by tying the truck up at Estill, running north to Gaston, and then serving Scotia and Garnett after he returns.

Q. What is the mileage involved in this operation?

A. Eighty-five.

Q. The termini, I believe, are Gaston on the north and Garnett on the south. Is that correct?

A. That is correct.

Q. Estill is where?

A. Estill is 10.2 miles north of Garnett.

Q. Is that the first station north of Garnett?

A. Second station.

Q. That operation is wholly within the State of South Carolina, is it not?

A. Absolutely.

Q. Is it to be physically connected with any other truck service performed either by the Receivers of the Seaboard or by any independent motor carrier?

A. It is not.

Q. It is, as I understand, to be physically isolated from any connecting motor-carrier service?

A. Absolutely.

[fol. 601] Q. Will you now state, please, the purpose that the Receivers have in mind in establishing this operation?

A. The purpose in establishing it is to change the present train service of one train each way per day between Columbia, South Carolina, and Savannah, Georgia, to a night operation.

Q. Is that train service now performed by day?

A. By day, yes, sir.

Q. What will be the schedule of your truck operation?

A. Leave Estill, northbound, at 7:00 a. m., arriving in Gaston at 10:15; returning, arriving Garnett at 1:55 and back into Estill at 2:30 p. m.

Q. Will you now state the method by which we propose to effectuate the plan which you have just described?

A. We propose to make set-out cars out of Columbia for——

Q. When you say "set-out cars" you mean rail cars?

A. Rail cars—LCL freight. We propose to make set-out cars from Columbia for Swansea, North, Denmark, and Fairfax, and from Savannah, Georgia, to Estill, Fairfax, and Denmark, where the truck will be unloaded for these particular stations and transported by the truck for the smaller intermediate stations.

Q. How many intermediate stations are there on that route other than those points at which rail cars will be set out?

A. Fifteen.

Q. You state that the principal purpose you have in [fol. 602] mind is to convert the present day rail schedule to a night train—is that correct.

A. Correct.

Q. On what schedule does your train now operate?

A. The northbound schedule is due to leave Savannah at 7:30 a. m., arriving Cayce Yard, which is Columbia, at 2:30 p. m. The southbound schedule is due to leave Cayce Yard, Columbia, at 6:00 a. m., arriving in Savannah at 2:10 p. m.

Q. What advantages will flow from converting that day schedule into a night schedule?

A. The reason for wanting to change from day to night operation is to give the carload shippers an overnight service between two important towns, Savannah and Columbia. In addition to that, this is a six-day train service; and the carload shippers in the territory between Columbia and Savannah, principally South Carolina points, will be given an opportunity for a full day's loading to be moved out at night after the loading is completed, whereas at the present time at the heavier loading points the trains pass too early to get the carloads loaded and away on that particular day.

Q. Will you explain by a specific instance just what you have in mind?

A. For instance, at Estill, South Carolina; the lumber mill at that point, we will say, loading a car on Monday morning. The loading is not completed at the time the train runs.

[fol. 603] Q. Let me ask you a question there. About what time does the train now pass Estill?

A. Loading is not completed at the time the train runs, about 9:30 a. m. The car is therefore left over until the following day and sustains the equivalent of a twenty-four-hour delay to the Eastern markets.

Q. What will the establishment of the proposed truck service do to correct that condition?

A. It will give us an opportunity to operate these trains at night and pick the cars up after the loading is completed for the day and get them moving at the terminal for other movement to destination.

Q. Is there a substantial movement of the sort that you have just described which will be benefited in the manner you have just stated?

A. Well, all of the freight in carloads loaded in this territory will, of course, benefit. The movement should run somewhere between eight and ten carloads of freight a day. That is during the light season, but during the vegetable season and the watermelon season in the South Carolina territory there is a very substantial movement.

Q. When you say from eight to ten carloads a day, you mean the volume of traffic now moving by rail, do you not?

A. Yes, carload shipments of lumber and other forest products.

[fol. 604] Q. Will that carload traffic be moved by truck?

A. No, sir.

Q. As I understand it, the purpose is merely to transport by the proposed truck service less-than-carload shipments to and from the intermediate points and through stations at which freight cars will be set off. Is that correct?

A. That is correct.

A. During the vegetable movement or other perishable Does that seasonal movement have any effect upon the performance of your freight train?

A. A very material effect.

Q. Please describe that.

A. During the vegetable movement or other perishable movement it is essentially necessary that the shippers in that territory be given just as late an hour for the closing of their loading as possible in order to make the scheduled movement to the Eastern markets.

Q. How will that condition be benefited by the proposed truck service?

A. It will mean that with the train running at night during the lighter seasons the people in the territory will be given a much later closing time in order to load their produce and get it out than they are given today.

Q. I believe you have stated, but if you have not please now state, if the truck operation will serve any points other [fol. 605] than rail stations.

A. None.

Q. We simply propose to parallel our rail line, do we not?

A. Absolutely.

Mr. Turner: May it please the Board, for the sake of the record I would like to interpose my objection to counsel's leading questions, stating over and over again the

purpose of the application. I do not press it, but I do want my objection to appear on the record.

Mr. Abeles: I think the record will show that the information I have secured from this witness was by direct questions, and any questions of a leading nature are simply to summarize what has been said.

The Chairman: You may proceed, Mr. Abeles, but Mr. Turner's objection will be noted.

By Mr. Abeles:

Q. What is the position of the highways over which the operation will be conducted, with relation to our rail lines.

A. Practically parallel, the entire distance.

Q. Does it digress from the railway to any substantial degree at any point?

A. It does not.

Q. Does it reach all the stations intermediate between the termini of the proposed truck service?

A. Yes, sir.

[fol. 606] Q. You have mentioned carload freight, Mr. Sauls. Will less-than-carload freight be benefited by this proposed service in any way?

A. It will, by earlier delivery of the freight at the destinations.

Q. Can you give us a specific example of that?

A. Freight moving now, I will say out of Columbia, going to Denmark, will leave Columbia at 6:00 a. m., arriving in Denmark anywhere from 9:00 to 11:00 a. m., making an afternoon delivery. Under the proposed change of train service, this freight will be available for delivery to the consignees early in the morning.

Q. That freight will still be carried by train, will it not?

A. Still be carried by train.

Q. The train operation, however, I believe you said, would be conducted at night?

A. At night, instead of day.

Q. And that would permit early morning deliveries at Denmark. Now, you stated, I believe, there would be four set-out points for rail cars between the termini of this proposed truck operation?

A. There will be four out of Columbia and three out of Savannah.

Q. Did you mention the three out of Savannah?

[fol. 607] A. I think so—Estill, Fairfax, and Denmark.

Q. And by set-out points do I understand you to mean that freight from Columbia moving south, on the one hand, and from Savannah moving north, on the other, will still be carried by train to these set-out points?

A. That is correct.

Q. And distributed from there by truck?

A. That is correct.

Q. With regard to LCL shipments which are carried by rail to the set-out points, what will be the delivery operations for such shipments to the smaller intermediate points?

A. The delivery operation to the smaller intermediate points will be on the same day as heretofore, but anywhere from an hour to three or four hours earlier.

Q. Give us, if you will, a specific illustration of that service.

A. Well, we will take a shipment moving from Columbia to Ulmers. Under the present operation, 75 would ordinarily arrive at that point from 10:30 a. m. until 12:00 noon.

Q. Train No. 75?

A. Train No. 75.

Q. That is southbound?

A. Yes, sir. Whereas the same shipment would be loaded on Fairfax under the proposed operation and be delivered at 8:00 a. m.

[fol. 608] Q. When you say loaded you mean would be delivered by rail?

A. Would be loaded on cars at Fairfax and delivered by the truck at 8:00 a. m.

Q. Contrast that with the service which is now performed on less-carload freight consigned to Ulmers.

A. Under the present service it would arrive at Train 75 around eleven o'clock or noon.

Q. Saving several hours in delivery?

A. Saving approximately four hours in delivery.

Q. Is that of importance to shippers, as a rule?

A. Yes, they had rather have the earlier deliveries than to have the afternoon deliveries.

Q. What effect will the proposed truck operation have upon the ability of the night train to switch industries along this route?

A. It will enable the train crews to switch the plants at a time when their labor is not working and avoid delay

that is occasioned by switching of plants at the time the forces are working.

Q. In your experience, Mr. Sauls, have you found any decided preference on the part of plant operators as to switching in the day time and the nightfime?

A. It is generally desired by all people loading freight in carload movements to have their plants switched after they complete their day's work, in order to avoid delay.

[fol. 609] Q. Why will the switching of plants by the local train be facilitated through the proposed truck operation?

A. The train movement will be facilitated by avoiding stops and delays at small points where there is practically no carload business and the LCL freight is extremely light.

Q. There is some, however?

A. Some. Not very much.

Q. Please give us your views with reference to any savings in expenses which the proposed truck operation will permit.

A. There will be no savings.

Q. Will stops be eliminated?

A. Stops will be eliminated at a number of stations.

Q. Has that any effect upon the cost of fuel?

A. There will be some saving in fuel in train stops, which will be offset by the expense of the truck.

Q. But there will be that saving, at least in train-operation costs.

A. Yes, there will be that saving in train operation.

Q. Do you propose to decrease in any way your train service?

A. In no way whatever. We are simply proposing a better service for the same patrons in the territory.

Q. The same number of round trips will be made?

A. Same number of round trips will be made.

Q. The only change being in the operation of the night schedule instead of the present day schedule?

[fol. 610] A. That is right.

Q. Have you any information regarding the volume of less-carload tonnage moving to and from the local stations intermediate between Gaston and Garnett?

A. I have.

Q. Have you that with you?

A. Yes, sir.

Q. Can you tell us, for a given period, how much less-car-load tonnage is now moving to and from those points?

A. For the period of February, 1936, through February, 1937, a period of thirteen months, we had the following less-carload freight to these points:

	Tons		
	In	Out	Total
Gaston	21	0	21
Woodford	34	6	40
Livingston	20	0	20
Neeces	106	93	199
Norway	164	156	320
Govan	24	70	94
Olar	140	88	228
Ulmers	41	18	59
Sycamore	25	8	33
Gifford	40	420	460
Luray	23	20	43
Scotia	23	29	52
Garnett	102	36	138

Witness (Continues:) In the outbound movement is included LCL shipments of cotton, some of which moved in carload lots; also naval stores, which moved under the any-quantity rates and is therefore subject to store-door and pick-up delivery. This is true at all points possibly [fol. 611] with the exception of Gifford, the outbound movement from that point being in other commodities.

Q. Have you totaled the tonnage which you have just enumerated?

A. I have not, but the average will run somewhere around four tons a day.

Q. I will not delay by asking you to do that, because the record will show it. Mr. Sauls, what will be the effect of the inauguration of the proposed truck service upon competing highway carriers, if any?

A. I don't see that there will be any effect, as there is no other connection with the truck, but it is simply a movement from set-out cars in this territory to the smaller points.

Q. Do you know of any competing truck lines in this territory?

A. I am not familiar with the lines of the trucking service, but I don't know of any in this particular territory. I have never seen any.

Q. On what forms of bills of lading will the traffic carried by the proposed truck service move?

A. Strictly on the regulation railway bills of lading and waybills.

Q. As I understand it, we propose to carry by this truck [fol. 612] only traffic which is offered at railway stations for transportation under railway bills of lading?

A. That is correct.

Q. Can you see any reason why a service limited to the extent you have just stated will in any way encroach upon the service performed by or traffic carried by competing truck lines, if there are any serving this territory?

A. I can not.

Q. What is the nature of the less-carload traffic for the transportation of which we are establishing this truck service, with regard to the length of haul?

A. I would say that the tonnage handled in this particular territory will run not less than 95 per cent of small shipments moving from the Chicago, St. Louis, and Eastern territories.

Q. Would that traffic naturally move by truck, regardless of the establishment of the proposed service?

A. I would say not, because the shipments are too small and the points of origin are too scattered.

Q. It has been heretofore moving by rail, has it not?

A. Heretofore moving all rail, and in some instances, of course, rail and water.

Q. Is it possible to estimate the revenue which would accrue exclusively to the truck lines in the operations which we propose?

[fol. 613] A. It is not.

Q. Will you explain for the record why?

A. In the first place, the shipments will move over various railroads and boat lines; the distance is very small; and it would necessitate taking each and every less-than-carload waybill and figuring up its revenue on a mileage basis. There would be no other way to get it; and that would be entirely too expensive to undertake.

Q. Is it proposed, if you know, to keep separate accounts for the rail and truck operations?

A. It is not.

Q. Would it be possible, for example, to estimate in advance of actual experience the proportion of the Seaboard haul on a given less-carload shipment which would be carried by rail and truck respectively?

A. It would not. Take, for example, shipments from Chicago to our territory, which at times move through the Montgomery gateway, at other times through the Atlanta gateway, and in many instances through Bostic and Hamlet, from the same point of origin to the same destination.

Q. Would there be a difference in the revenue accruing to the Seaboard dependent upon the gateways through which the shipment moved?

A. Yes, because there would be a difference in the mileage.

Q. And the divisions, generally speaking, I understand [fol. 614] are made on a mileage basis?

A. Most of them.

Q. Mr. Sauls, will any freight which is moved by this proposed truck service from Gaston south be delivered to the truck by any other truck service or by rail?

A. By rail entirely.

Q. Is the same thing true of traffic moving from Garnett north by truck?

A. The same is true at all stations.

Q. And I understood you to say, of course, that as to traffic consigned to certain intermediate points, much of it will move through Gaston and Garnett by rail and be laid off at the lay-off points which you have named?

A. Yes, the largest percentage of it will. The set-out cars for LCL freight, of course, being set out at the principal points, where we would have more less-than-carload tonnage than at other points.

Mr. Abeles: I think that is all, Mr. Chairman.

Chairman Darby: Proceed, Mr. Watkins.

Cross-examination.

By Mr. Watkins:

Q. Do you have any intrastate rights between Gaston and Garnett?

A. I think that has been approved.

Q. Are you operating it now?

A. Not at the present time.

[fol. 615] Q. Are you waiting to see if the interstate rights are approved before you begin operation?

A. Yes, sir.

Q. I believe you testified you are familiar with the transportation service in this area by rail but not by truck?

A. Yes.

Q. Do you give a pick-up and delivery service at those points?

A. We do when the rate is 20 cents per 100 pounds or more.

Q. Under your tariff provision?

A. Yes, sir.

Q. Is that true to all of these points?

A. Yes, sir.

Q. Would that pick-up and delivery service be performed by this truck?

A. No, sir.

Q. It would not be performed by this truck?

A. No, sir.

Q. Would you have any objection to the Commission's limiting it so that it would not be performed by this truck?

A. None whatever.

Mr. Abeles: I want it clearly understood that that does not commit the applicant to a permanent policy in any way. As I have previously stated, it seems to me that it should be of no consequence to the protestants in this case with [fol. 616] what equipment we perform the service but that they should be interested merely in the scope and extent of the service itself.

Mr. Watkins: May I say, Mr. Chairman, that the right of a rail carrier to perform pick-up and delivery service is still questioned, and I want to be sure that this application is not one to perform pick-up and delivery service at those points?

Mr. Abeles: That I can acquiesce in. The application itself will show that.

Mr. Watkins: Then it is not your intention by these applications to obtain the right to give pick-up and delivery service at those points involved?

Mr. Abeles: Not at all. We do not have to obtain the right to perform pick-up and delivery service under the

Federal Motor Carrier Act. That is a service which is within the Commission's jurisdiction under Part 1 of the Interstate Commerce Commission Act.

Mr. Watkins: Do you maintain trucks at this point to perform pick-up and delivery service?

The Witness: We do not.

By Mr. Watkins:

Q. Do you have people employed at those points?

A. Under contract.

Q. Then a shipment which moved into one of those points [fol. 617] by truck would be transferred to the truck of your contract carrier to perform store-door delivery?

A. Shipments coming into these points by our truck would be unloaded at our depot and later would be delivered by another truck which we have under contract.

Q. Then it would be possible, if this application were granted, for traffic to be delivered into one of these points by motor carrier and be afforded delivery service by another motor carrier—is that correct?

A. I do not think that that is correct; I do not think it is necessary for the draymen in these little towns to have a certificate as such.

Q. I understand that is your contention, but I am asking you if that is not the physical fact—if it is not the way it might run under this application.

A. We are proposing to do under this application just exactly what we are doing today in freight cars and the pick-up and delivery service, and it is not my understanding that people doing this class of work are required to get any kind of certificate.

Q. You still have not answered my question. I am asking you whether or not, if this application is granted, it would be possible for freight to move inbound to one of these stations by motor carrier and then be afforded a delivery [fol. 618] service by another motor carrier.

A. Not under our present contracts at these stations, no, sir.

Q. Are your present contracts limited to the delivery of freight inbound by rail?

Mr. Abeles: Off the record.

(Short discussion, outside the record.)

Q. Will you answer the question?

A. I can answer the question this way; under our present operations we have at these small stations a contract with some particular individual to make the deliveries to the stores, which is not required by any special kind of vehicle, and in many instances wagons are used and in other instances motor vehicles. That is the actual practice.

Q. And these same persons that are under contract with you at those stations would also handle for delivery the freight moving into those stations by your proposed motor-carrier operations?

A. From the depot, yes.

Q. How do you propose to get this freight from Columbia to Gaston?

A. The Gaston freight from Columbia would be loaded into a car of LCL merchandise that would be set out at Swansea by the night train.

Q. Then when your truck leaves Gaston it will be empty? [fol. 619] A. Correct.

Q. And it will get its first load at Swansea?

A. The truck originally starts at Estill.

Q. As I understand it, by this service you do not contemplate any through service by motor carrier, but you contemplate the truck's moving over this route and loading at the various points where you have these set-out cars?

A. That is right.

Q. Would you be willing for your certificate to be so limited?

Mr. Abeles: I can answer that. No.

Mr. Watkins: Let the witness answer it.

Mr. Abeles: I think that is a question for counsel to answer.

Mr. Watkins: He has testified to what he is proposing to do. Now I want him to state to what he is willing to limit these operations.

Mr. Abeles: I think that is a question for counsel to answer, as to the policy and scope of the operation. I might add to my statement that we are willing to have the application and authority limited to the scope of operation for which we have filed application. We want no more and no less.

Mr. Watkins: If by any chance the application which you have filed for differs from the service which your wit-
[fol. 620] ness intends to do, are you willing for your application to be limited to what the witness has stated is the policy and is what you intend to do?

Mr. Abeles: I shall have to ask that the question be read.

Exam. McCaslin: Off the record.

(Statement by the Examiner, outside the record.)

By Mr. Watkins:

Q. Let's assume a shipment from Columbia, South Carolina, to Denmark, South Carolina. How do you propose to move that?

A. In a carload of LCL freight from the Columbia warehouse to the Denmark warehouse by train.

Q. Assuming a shipment from Columbia to Govan. How would that be handled?

A. A shipment from Columbia to Govan would move from Columbia warehouse in less-carload shipment loaded in the car set out at Denmark and would be picked up from there and moved by the truck to Govan.

Q. Is Govan south or north of Denmark?

A. South, seven and one-half miles.

Q. Then it would not be your purpose to move any Columbia freight from Gaston to Govan all by truck?

A. No, sir.

Q. And you are not proposing any such service as that?

A. No, sir.

[fol. 621] Q. Why did you decide to start this service at Gaston instead of Columbia? That is your terminal, isn't it?

A. The reason for it is that we are figuring on using only one truck and serving only very small points, in order to avoid train stops. The train will have to stop at these set-out points anyway, in order to move carload freight. I might add there, Mr. Watkins, that as a matter of fact the truck really starts from Estill.

Q. Did you propose to handle over this truck operation interstate freight that originates on your line in the states of Alabama, Georgia, Florida, North Carolina, and Virginia?

A. Yes, sir.

Q. That would be moved by the Seaboard Air Line Railway either by rail or truck or rail and truck to final destination?

A. Yes, sir.

Q. Do I understand that you do not propose to move any carload traffic by these trucks?

A. No, sir.

Q. How large a shipment would you assume would be moved by this service?

A. Well, move any less-than-carload shipment that the truck will be capable of handling from the set-out point to these smaller stations. If it is too large for the truck, then it would be necessary to move it by train.

[fol. 622] Q. I believe you testified that you do not intend to keep separate records for your motor-carrier operation and your rail operation?

A. That is correct.

Q. Do you agree with the theory that this motor-carrier operation is under the jurisdiction of the Federal Motor Carrier Act rather than the Interstate Commerce Act?

Mr. Abeles: I think that is calling for a legal conclusion and object on the ground that the witness is not qualified to answer.

Mr. Watkins: I am asking him his theory on this subject as the basis for further questions which will follow on accounting practices.

Mr. Abeles: I still say that it calls for a legal conclusion which the witness is not qualified to draw.

The Chairman: State the question again.

Mr. Watkins: My question is whether the witness' theory is that this motor-carrier operation comes under the Federal Motor Carrier Act or under the Interstate Commerce Act, Part 2 or Part 1.

The Chairman: I do not see that that would have any particular bearing on the case, whether or not he has any theory.

Mr. Watkins: You sustain the objection?

The Chairman: Yes, sir.

[fol. 623] By Mr. Watkins:

Q. Are you familiar with the proposed accounting rules for motor carriers which have been tentatively approved by the Interstate Commerce Commission?

A. I am not.

Q. Is there any motor-truck operation of the Seaboard Air Line in your division?

A. Yes, sir.

Q. There is?

A. Yes, sir.

Q. Do you know the cost of operating trucks?

A. I know the cost of operating those that I am operating—the approximate cost.

Q. I believe you testified that there was not going to be any saving in this except by virtue of the elimination of additional stops by your train?

A. That is right.

Q. And there would be an additional expense, which would be the cost of the truck operation?

A. Correct, less what would be saved in train stops.

Q. Exactly. That is the point I am getting at. What I want to know is what is the figure that you believe the cost of the truck operation will be and the saving from the elimination of stops of the trains.

A. I had not figured that, but based on $2 per stop for the train the saving would run $728 per month, on a 26-day [fol. 624] basis, and that would be really more of a saving than the cost of the truck operation, which we are now handling for around $350 per month.

Q. That is assuming a stop at each point on each train each way each day?

A. It is not. I only figured fourteen stops would be saved per day, and there are fifteen stations.

Q. Then you eliminate one a day in your calculations?

A. No, I eliminate more than that. Assuming each train would stop at those points, I eliminate a little more than half of them, because the trains would not stop at every point every day.

Q. That is what I was getting at; they will not stop at every point every day. And there are only fourteen points on this line?

A. Fifteen.

Q. Which you do not contemplate stopping at often if the proposed service goes in?

A. Yes.

Mr. Watkins: That is all.

Mr. Turner: I have just a very few questions I should like to ask this witness. May I, however, ask the Board when it is the intention to adjourn for lunch?

The Chairman: At the close of this witness's testimony.

[fol. 625] Mr. Turner: I should like, then, to make this statement in the record. This hearing was called for nine o'clock yesterday morning. The protestant New South Express Lines had two gentlemen who hold public office in the Town of Timmonsville come here to testify as witnesses in the docket to follow this one. Prior to the opening of this hearing we requested of counsel for the applicants that these out-of-town witnesses, as well as the out-of-town witnesses whom he had, be allowed to testify out of order. It is now my purpose to request that this witness be excused for the time being, to the point of my waiving any examination which I care to make, and permit us to put on these two witnesses from Timmonsville at this time. Otherwise we may not be privileged to have their testimony in this record.

Mr. Abeles: Off the record.

(Short discussion between counsel, outside record.)

The Chairman: On the record.

Mr. Abeles: I am entirely willing to accommodate you in that respect, Mr. Turner.

The Chairman: This witness is excused temporarily.

Call your first witness, Mr. Turner.

[fol. 626] A. R. Garner was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. Garner, you live in Timmonsville?

A. Yes, sir.

Q. Do you hold any public office?

A. I am Mayor.

Q. How long have you been a resident of Timmonsville?

A. Well, I was born in Timmonsville, and I have been back there about forty years.

Q. You lived there for some time prior to that?

A. Well, I have lived there about forty years. I lived in Darlington a while, 'way back.

Q. Mr. Garner, are you familiar with the transportation facilities that are now afforded the community of which you are the Mayor?

A. Yes, sir.

Q. What facilities do you have now?

A. Well, we have the Seaboard train, comes in there and delivers freight and passengers once a day; also the Atlantic Coast Line comes in there. We also have some truck lines that come in there. Of course, the bus lines pass through there.

Q. Mr. Garner, is there now any need or public necessity for any change in the service of handling freight into [fol. 627] the Town of Timmonsville?

A. Well, not as I see it, no, sir. I don't know of any that could be benefited more than what we have got.

Q. Are you or are you not familiar with the application of the Seaboard Air Line that is in discussion now for a line from McBee to Sumter and return?

A. Yes, sir.

Q. Do you, speaking for yourself and your constituents in Timmonsville, approve or disapprove of that application?

A. I personally disapprove of it, and I have talked with a good many citizens of Timmonsville——

Mr. Abeles: Let's confine the witness's testimony to what he personally knows.

Mr. Turner: We submit it is proper, your Honor. He said he had talked to the people.

Mr. Abeles: We object, your Honor.

Mr. Turner: It is just as proper as the testimony of the witnesses from Chesterfield County who were here yesterday.

Mr. Abeles: I want to explain that I am not intending to be obstructive, but the purpose of my objection is that Mr. Garner is attempting to give certain views based on the opinions of other parties, and I have no opportunity to examine those other parties as to the basis of their opinion.

The Chairman: Mr. Abeles, Mr. Garner is representing [fol. 628] his community in the capacity of mayor; they

have asked him to come here before this Joint Board and represent him; they have told him of their approval or disapproval; and I think his testimony should be allowed to go in, and I am going to rule so.

Mr. Abeles: Note my exception, please.

The Chairman: It may be noted.

By Mr. Turner:

Q. Mr. Garner, you were about to state why they object.

A. My main reason for objection is this. The Seaboard comes into Timmonsville on, you may say, a spur line; it stops at Timmonsville. The way I see it, if the Seaboard is allowed to have a truck line and take off this business they have already got and put it into the truck line, it is going to do away with the revenue of the Seaboard in Timmonsville, and it will be only a matter of time when the Seaboard will want to take up the line into Timmonsville, and we paid the Seaboard to go into there. We invested $10,000 in it. If they get the revenue to the bus line and have practically no revenue to the train line, of course they will want to come in later and take up the train line.

Q. Where you use the word "bus" what do you mean?

A. I mean truck.

Q. Mr. Garner, it has been testified in the other cases, and I state this hypothetical question: Assuming that the [fol. 629] officials of the railroad who testify in this case should testify that they have no intention of removing the present rail service or reducing the present rail service, does that alter your testimony, that you do not want this application granted?

A. Well, if they will agree to it we would like to have that in the record. We got it in once and would like to have it in again.

Q. Did this same applicant ever make any representations to you or your community at the time you advanced this sum that you spoke of?

A. No, that was 'way back, you know. We never agreed to the truck or anything else.

Q. Did they or did they not tell you anything about proposing to extend your line?

A. They agreed to extend the line back, miles on.

Q. Did they extend it?

A. No, sir. But we paid our money.

Mr. Abeles: We think this is all irrelevant; the only question before this Board is present and future public convenience and necessity. Past history has nothing to do with it. The Commission has held so time and time again, and I really feel we are wasting our time with this testimony.

Exam. McCaslin: Off the record.

(Remarks by the Examiner, off the record.)

[fol. 630] The Chairman: On the record.

By Mr. Turner:

Q. Do I understand that you still favor the Seaboard's operating into the town of Timmonsville?

A. I do, yes, sir. We want them to continue to operate.

Q. And you want them to operate on the railroad?

A. I want the Seaboard Air Line to operate on the railway. I want the rails to continue to be operated on.

Mr. Turner: The witness is with you.

Cross-examination.

By Mr. Abeles:

Q. Mr. Garner, are you engaged in any mercantile business?

A. Well, not specially, no, sir.

Q. Do you receive or ship freight?

A. Sometimes, yes, sir.

Q. What character of freight?

A. Well, different kinds. Personally, I ship very little freight.

Q. Are you familiar with the service now rendered by the railway at Timmonsville?

A. It is good.

Q. Do you know how long it takes for the receipt of a shipment made by rail from Columbia, for example, to Timmonsville?

A. No, sir, I do not.

[fol. 631] Q. If we assume that freight shipped from Columbia to Timmonsville would, through the establishment of the truck service that we propose here, be expedited as much as twenty-four hours, would that benefit your community?

A. Well, as I say, there is a truck service there now, and I guess the trucks would give the same service that you would give.

Q. Is there truck service, do you know, between Columbia and Timmonsville?

A. I could not say.

Q. You really do not know, then, what service your community is getting?

A. I know there is trucks bringing in freight there, but I don't know where from.

Q. You do not know where it comes from?

A. No, sir.

Q. And you do not know how long it takes to get freight from Columbia to Timmonsville?

A. No, sir.

Q. Or from any other point to Timmonsville?

A. No, sir.

Q. The point I am getting at is this. If we can establish to the satisfaction of yourself and other residents of the community in which you live that the railroad can expedite the shipment of freight to Timmonsville from points where [fol. 632] you do your marketing, and expedite that delivery materially through the establishment of this proposed truck service, do you or do you not think that would benefit your community?

A. Well, that would be all right, providing it does not do away with the benefit of the railroad, you understand—provided there would be no chance of taking our railroad up. That is the main thing with me. If you go to take a carload of merchandise——

Q. Mr. Garner,——

Mr. Turner: We submit, Mr. Chairman, that the counsel has no right to interrupt the witness.

Chairman Darby: I think the witness has a right to finish his answer.

(Witness continues:) Take a truckload of freight at McBee, and you divide it up and send it out on a truck—take out the truck stuff out of it and send it out on a truck and send the balance of the stuff out on the train, you are out two expenses; and if you are taking the stuff away from the railroad how can the railroad pay expenses? How can the railroad continue?

By Mr. Abeles:

Q. You mean the railroad in its rail service?

A. Yes, sir. What we are interested in is keeping the railroad, you understand. That is what we are interested in. [fol. 633] Q. Then if you are assured that the inauguration of this truck service would not result in the abandonment of the rail service, would you withdraw your opposition, to this proposal?

A. Well, I am not so much in opposition to the truck service or anything like that; but as I see it, or anybody else could see it—but as I see it, if the freight is taken off the railroad it is just a matter of time before the railroad would be taken up. I don't see how you could give me any assurance at all that it would not be, because when it gets to the point that you are taking all the freight by truck of course you are going to discontinue the railroad.

Q. You have not yet answered my question, and I will put it in another way. The only reason you are opposing this truck service is your fear that it will result at some time or other in the abandonment of the rail service?

A. To the greatest extent it is.

Q. If you were assured that that would not take place, either now or in the future, you would have no opposition to this proposal?

A. Well, if there was any way——

Mr. Abeles: Just a moment. I think the question is susceptible of an answer.

Exam. McCaslin: If the examiner may intervene, I think the question is purely hypothetical and that answer to it [fol. 634] would not benefit the proceedings in any way.

Chairman Darby: I think any assurance of guaranty that the railroad might give before this Board they *they* would not abandon those tracks would not have the slightest weight before the Interstate Commerce Commission on a petition to abandon them.

Mr. Abeles: To do what?

The Chairman: In other words, if the railroad were to apply to the Interstate Commerce Commission for permission to abandon those tracks, I don't think any assurance the railroad might give before this Board would have any bearing with the Commission whatever.

Mr. Abeles: I agree with the Chairman entirely. The information I am trying to get from this witness is the

single definite, specific statement that he is appearing here in opposition not because he is opposing the inauguration of the truck service but because he fears that it will lead to the abandonment of the railway.

The Chairman: I think he has stated that.

Exam. McCaslin: At least six times.

Mr. Abeles: I don't think he has.

The Chairman: Make that statement for him, Mr. Garner.

The Witness: All right, sir.

Mr. Turner: I address the Chairman, and I should like to make a remark before any other is made. Mr. Chairman, [fol. 635] I take the position that since there have been three questions put as to what the witness predicated his objection upon, he also stated in the record that there is no public convenience or necessity for this line.

Mr. Abeles: That is why I am trying to get the witness to state specifically his position.

The Chairman: I ruled that he might state his position.

Mr. Abeles: If he will answer this question I am through with him.

By Mr. Abeles:

Q. Your only purpose in opposing this application, as I understand it, Mr. Garner, is your fear that if the truck service is inaugurated it might at some future time lead to the abandonment of your rail service. Is that or is that not a correct statement of your position?

A. Well, as I see it, if the truck service is established, just as I see it (we all have the right to see it as we do), there is nothing in the world, if you take the freight from the railroad and the railroad is not going to have any revenue to any extent, there is no assurance that you could give that it would not be. I don't see how I could get any assurance at all that it would not be, because if the revenue is going to be taken away from the railroad of course they will want to abandon it.

The Chairman: Answer yes or no to the question that he asked.

[fol. 636] Mr. Abeles: Let the question be read, please.

Mr. Turner: Off the record.

(General discussion, outside the record.)

The Chairman: On the record.

If you feel like answering yes or no, Mr. Garner, answer in that way and then explain to him as best you can, because that will clarify the situation. Go ahead and answer him again.

Mr. Abeles: Let the question be read, please.

(The reporter reads the question, as follows: "Your only purpose in opposing this application, as I understand it, Mr. Garner, is your fear that if the truck service is inaugurated it might at some future time lead to the abandonment of your rail service. Is that or is that not a correct statement of your position?")

A. You say you want me to answer yes or no?

Chairman Darby: No, I withdraw that request. Answer it as best you can.

A. I say that is the greatest extent. I am satisfied in my mind that if they establish this truck line it will be only a matter of time when the Seaboard will be removed from Timmonsville because of want of revenue. I don't want the Seaboard to move from there, because we paid them $10,000 to come in there, and we get a little revenue out of them now, and if they run the truck in there we will [fol. 637] not get any revenue.

Mr. Abeles: I think that is all, Mr. Chairman. I think that statement clarifies it.

Redirect examination.

By Mr. Turner:

Q. There is no need for more freight service in the town of Timmonsville at present, is there?

A. No more than I have stated.

Mr. Turner: I think that is all, Mr. Garner.

W. R. McLeod was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. McLeod, where do you live?

A. I live in Timmonsville, South Carolina.

Q. Dr. McLeod, do you hold any public office in the town of Timmonsville?

A. Town clerk.

Q. How long have you been a resident of Timmonsville?

A. Been there about thirty-five years now.

Q. Are you familiar, or not, with the transportation facilities into the town of Timmonsville?

A. Yes, sir, I think I am pretty familiar with them.

Q. Is there any need now for any additional transportation service into Timmonsville?

A. I would not think so.

[fol. 638] Q. Dr. McLeod, were you with the city at the time, or do you have any personal knowledge of the concessions made by the Town to the Seaboard Air Line Railway for coming into that community?

Mr. Abeles: I have heretofore stated my position on that question. I do not think that what has gone on in the past has anything to do with the present and future public convenience and necessity, which is the sole issue before this Board.

Exam. McCaslin: Did this witness hear the testimony of the last witness on that point?

A. Yes, sir.

Exam. McCaslin: Would he testify to the same facts?

A. As to the money, yes, sir.

Mr. Abeles: Does that cover the entire scope of his testimony?

Mr. Turner: Yes, sir.

Cross-examination.

By Mr. Abeles:

Q. Dr. McLeod, if it were shown by the record in this case that what the Seaboard is proposing to do would actually improve the service received by the town of Timmonsville, would you have any objection to the proposed service?

A. Not if it were shown that it would improve it, no, sir.

[fol. 639] Q. And you would withdraw your objection?

A. I would not withdraw, because I would not have any proof; you could not show me.

Q. If we do show that?

A. But you can not show it.

Q. Just a moment. If we can show that, you of course would welcome that improvement?

A. Yes, if you could show it.

Mr. Turner: I submit the witness has a right to go on with his explanation, as he was trying to do when counsel stopped him.

Mr. Abeles: I thought he had finished.

The Witness: What I meant by that was that it would take time to show if we needed it. Right at present I think we have enough. We have Atlantic Coast Line, direct route to Columbia and Sumter; we have an express line that makes a daily route.

By Mr. Abeles:

Q. Are you familiar with the time now consumed in the shipment of freight from Columbia to Timmonsville by rail?

A. Well, it is a daily train; I think if it is loaded in Columbia this morning it will get there in the afternoon.

Q. You understand that?

A. Yes, sir. Shipped this afternoon and get there in the morning. If it leaves Columbia, I understand, before four [fol. 640] o'clock or three o'clock in the afternoon, we get it in the morning. That is my understanding; I am not sure about that. That is over the Coast Line; not over the Seaboard.

Q. If we can show that is not a fact on shipments made by the Seaboard and that we can offer you, through the establishment of this truck service, a very much expedited delivery at Timmonsville, you would welcome that, would you not?

A. You mean go by McBee?

Q. Yes, sir.

A. You could not do it.

Q. If we can show that we can?

A. We have a truck service that makes quicker connect n than that.

Q. I am talking about the Seaboard service only.

A. I was talking about the service generally.

Q. No, I did not mean that.

A. My last experience with a shipment; it left there in the night, about eight o'clock, and got to Greenwood the

next morning. That was by truck line; that is quicker than the railroad, of course.

Q. I put my question this way. Have you any objection to the Seaboard's improving its service to Timmonsville from Columbia or any other points from which Timmonsville receives freight?

[fol. 641] A. No, provided it does not affect the railway from McBee to Timmonsville.

Mr. Abeles: That is all.

Mr. Turner: Nothing else, Doctor. Thank you very much.

The Chairman: Witness excused.

Applicants' Evidence

Mr. Abeles: We have one witness from out of town whom I should like to put on at this time, so that he may then be excused.

Chairman Darby: All right, sir.

Mr. Abeles: I call Mr. Manship.

C. A. Manship was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. What is your name?

A. C. A. Manship.

Q. Where do you reside?

A. Hartsville, South Carolina.

Q. That is on the route of the truck service proposed by the Receivers of the Seaboard between McBee and Sumter, is it not?

A. Yes, sir.

[fol. 642] Q. Will you state briefly your position?

A. As a shipper and as a receiver of freight during the past thirty-five years——

Q. Let me interrupt. In what business are you?

A. The fertilizer business.

Q. Dealer in fertilizer?

A. Manufacturer.

Q. Manufacturer of fertilizer. Go ahead.

A. Also, I have the general interest of the town in mind. It has been my position all the time to get the very best service from transportation people possible, the most ex-

peditious service. That is what we have been fighting for and cussing the railroads about quite a while.

Q. Have you had experience with shipments received by you via the Seaboard from Columbia or other points?

A. Yes, I have had numbers of shipments.

Q. Can you tell us approximately how long it takes a shipment to go from Columbia to Hartsville?

A. I am not familiar enough with the railroad schedules fight now to say absolutely how long it would take. As a receiver of merchandise, we have to wait until the stuff is delivered to us.

Q. If it is shown in this case that by the inauguration of truck service for which authority is sought in this application deliveries from Columbia and other points to Harts-
[fol. 643] ville can be expedited as much as twenty-four hours, or possibly less, would that be helpful to you and to other residents of this territory?

A. Undoubtedly so.

Q. Can you see any reason for objection to this proposed service, with the result that I have just stated, from any resident in this territory at all?

A. I can not.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Any questions, Mr. Turner?

Mr. Turner: Yes, sir.

Cross-examination.

By Mr. Turner:

Q. Mr. Manship, you say you are a shipper and receiver of freight, principally fertilizer?

A. Fertilizer and bags—various things that go toward the manufacture of fertilizer.

Q. You are engaged in the business of manufacturing fertilizer in Hartsville?

A. Yes, sir.

Q. Do you get most of your shipments in carload lots?

A. Yes, sir.

Q. So if they instituted the service applied for here, for the shipment of less-than-carload freight, it would not affect you at all, would it?

A. Affect me to the extent that I get less-than-carload
[fol. 644] shipments.

Q. But your principal shipments are carloads?

A. Yes, sir.

Q. Do you know Mr. C. T. Jordan?

A. Yes, sir.

Q. Is he not engaged in the transportation of property by motor truck?

A. I understand so, yes, sir.

Q. He lives in Hartsville, does he not?

A. Yes, sir.

Q. Has he ever hauled anything for you?

A. I don't think so. I have talked with him several times about the hauling of stuff, but I don't think I have ever got any by him, because his charges were always too high. There might be some little specific case. Wait a minute; I received by his truck line just a few days ago a little shipment from Greensboro.

Q. Was the service, in point of time, satisfactory?

A. The shipment was a long time getting there. I don't know where the fault was.

Q. You mean from Greensboro there?

A. Yes, sir, from Greensboro.

Q. Do you know whether Mr. Jordan holds himself out to haul for everybody generally there?

A. It is my understanding he hauls for the public.

[fol. 645] Q. Doesn't he have some official position there, or isn't he connected with the Chamber of Commerce?

A. He may have been on some committees there of the Chamber of Commerce.

Q. He is a man well known there?

A. Well known.

Q. And he does do a trucking business?

A. I understand he does.

Q. You get freight from Columbia by the Atlantic Coast Line direct to Sumter and then by Seaboard to Hartsville?

A. The Coast Line goes into Hartsville. I should think if the Coast Line would make a shipment from Columbia to Hartsville it would go through Florence. If the Seaboard makes a shipment to us from Columbia, probably it would go down by McBee.

Q. I show you a railroad map of the State of South Carolina, and I ask you if it is not just about the same distance and about as circuitous a route by either the Seaboard or Coast Line Railroad?

A. I think it is a little farther by the Coast Line.

Q. But isn't the route approximately the same?

A. Within a few miles.

Q. Is it your opinion that the transfer of freight from a box car at McBee to a truck would render any greater service, normally speaking, than the transfer at Florence [fol. 646] from one box car to another?

A. Will you state that question again?

Q. In your opinion, would it be any better service for a railroad to ship by box car from Columbia to McBee and to transfer at McBee to a motor truck than to ship by Florence and transfer at Florence from one box car to another?

A. That would depend on the delay in the schedule of the train from Florence to Hartsville over the Coast Line and the schedule of the truck from McBee.

Q. In other words, the nature of the service is not so important as the actual performance of the service?

A. The quicker you can get the service performed and the cheapest kind of way is the service you are looking for all the time.

Q. Mr. Manship, you are not in favor of the Seaboard's taking up its tracks over there, are you?

A. No, sir. I don't think there would be any danger of its taking up its tracks.

Cross-examination.

By Mr. Watkins:

Q. Do you know of any truck lines giving service at Hartsville?

A. The New South Express Line furnishes service there. Between what points, and so forth, I am not familiar.

Q. Do you ever use their service?

A. I do not recall. It may be I got a little shipment on [fol. 647] their line.

Q. Generally speaking, you do not know their service?

A. No, I am not familiar with it.

Q. Is there any other service you know of?

A. There are some other truckers there. Chapman is there.

Q. Is that Thomas G. Chapman?

A. Yes. Whether he operates regular through service to other points I do not know. He may haul cotton, haul fertilizer,

Q. You have never had occasion to investigate his service?

A. No, sir.

Q. Are there any other truck lines there?

A. No, that I recall. There may be some others in there. P. D. Miller was in there at one time.

Q. You have never used his service?

A. No, sir.

Q. You have never had any occasion to use a faster service, so you have never investigated his service?

A. No, sir.

Q. How about the Atlantic States Motor Line?

A. Didn't know there was any such line in existence.

Q. Although you need some faster service, you have never taken occasion to investigate the service that is now available—is that right?

A. Usually the people that furnish the service come [fol. 648] around and let you know about it. I don't know that they have ever come around to let me know their service is available, or not.

Q. None of them have ever called upon you to let you know their service is available?

A. The New South has.

Q. But you have never seen fit to investigate their service to see what it is?

A. I have to a limited extent.

Q. To what extent?

A. That is the best I can answer you.

Q. Between any particular points?

A. No, sir.

Q. Then you have never investigated their service between any two particular points?

A. No, sir.

Exam. McCaslin: Off the record.

(Short discussion, outside the record.)

Mr. Watkins: That is all.

The Chairman: Any further questions?

Mr. Abeles: None for me.

The Chairman: Did you say you have another witness?

Mr. Abeles: No, sir. That is all.

Chairman Darby: We will take a recess until 2.45 p. m.

(Whereupon, at 1.30 o'clock p. m., the hearing was recessed until 2.45 p. m.)

[fol. 649] Afternoon Session

Chairman Darby: The hearing will come to order.

Mr. Turner: I should like to cross examine Mr. Sauls now. If you recall, I offered to waive it, if necessary, in order to put on the other witnesses out of turn, but counsel agreed to their being put on without my doing that.

Mr. Abeles? Yes, sir.

Mr. Sauls, will you take the stand again, please?

C. H. Sauls testified further as follows:

Cross examination.

By Mr. Turner:

Q. I understand you to say that you are operating a truck now for $350 a month?

A. Yes.

Q. How many miles are you operating that truck?

A. 105 to 110 miles a day. A light truck.

Q. Does that $350 show a depreciation item and an overhead item, too?

A. It does.

Q. Does that cover insurance of any type?

A. I am not sure, Mr. Turner, whether the insurance is covered in that or not. I would not like to say.

Q. How many days a month does that operate?

A. Twenty-six. In other words, every day except Sunday or a legal holiday.

[fol. 650] Q. Have you calculated what, per mile, your cost would be on this proposed route?

A. I figured roughly it would be possibly around eleven cents a mile. I have not figured it out.

Q. You stated that the people along this route would prefer the proposed service, which would give them more expeditious handling to the Eastern markets?

A. Their carload business, yes.

Q. Just when would a shipment made now out of Norway, under the present schedule, reach the New York market?

A. On the present schedules, as now constituted, would reach the New York market at the same time as that proposed, but the closing time in the fields would be much earlier. It would not give them the day for loading.

Q. Where would the layover be now?

A. Well, the freight trains, one car lays over in Columbia and one in Savannah. It takes two cars to operate it.

Q. Where would the freight that you pick up now out of Norway in the middle of the day, where would it lay over?

A. Either at Savannah or Columbia.

Mr. Abeles: Which direction are you speaking of?

Mr. Turner: Going to the Eastern markets; that would be north.

By Mr. Turner:

Q. You would carry it either to Savannah and hold it there or to Columbia and hold it?

[fol. 651] A. That is right.

Q. What time does your local freight go north out of Norway now?

A. It is scheduled to pass Norway at 11.55 a. m.

Q. And under the new schedule it would leave there at what time?

A. Approximately ten to ten-thirty at night.

Q. Eleven hours' difference?

A. Yes, sir.

Q. A shipment now leaving Norway at eleven o'clock reaches Columbia about what time?

A. Anywhere from five to five-thirty.

Q. And does not get out of here until when?

A. Until after midnight. Leaves Columbia at midnight.

Q. Do you anticipate changing the schedule of that northbound train?

A. Yes, sir.

Q. You do anticipate changing it?

A. Yes, sir.

Q. Then, as a matter of fact, in order to render the same service to these people to the Eastern Markets you could set up your through schedule just as well as you are changing it to meet your proposed new arrangment?

A. I do not understand that question.

Q. You will have to change your present through sched-
[fol. 652] ule to the East in order to accommodate the people along this proposed route, under your proposed arrangement?

A. In this particular territory, yes.

Q. Then it is a matter of a change of schedule in order to furnish those people a more expeditious service to the East?

A. That is correct.

Q. And it follows, therefore, that if you now change your schedule and, instead of running your Eastern through freight out of here at midnight, you would run it at six o'clock in the afternoon, you would serve those people on carload business just as well as you propose doing under this arrangement? Is that right, or not?

A. That is correct as to the carload business, with the exception that with the numerous stops at small stations I could not make the schedule.

Q. You do come in now, you said, about five o'clock?

A. In the afternoon, yes.

Q. The real difference in the arrival time in the Eastern markets now of merchandise shipped along this route we are talking about is the delay that is occasioned in Columbia by reason of the failure to make a connection with your through trains?

A. We are not figuring on the carload business as to merchandise, Mr. Turner. We are figuring on the vegetables and forest products and not merchandise, because
[fol. 653] there is no merchandise to speak of from this territory.

Q. When you speak of speeding up as one of the reasons for justifying this truck line you speak of speeding up the service to these people. In order to speed up the service you have got to change your through schedules to the East?

A. No, we shall not change any of our through schedules to the East. It is only a matter of speeding up or changing the train service in this particular territory to match up with the year-round advertised through schedules to the Eastern points or markets.

Q. Then did I misunderstand you a moment ago? I understood that you said you intended, if this authority

were granted, to change your midnight through freight train out of Columbia to the Eastern markets.

A. No, sir.

Q. You do not intend to do that?

A. No, sir.

Q. Do you then tell me that a freight train through Norway at ten-thirty at night would make connection with a midnight train from Columbia?

A. Yes, sir.

Q. That is what you propose?

A. I said in my statement that the train left Columbia after midnight.

Q. How long after midnight?

[fol. 655] A. They will leave on direct connections with the train from the South. The crews change at Columbia, which is the dividing point between the South Carolina Division and the North Carolina Division, and are therefore called to make direct connections on figures given the yard by the train dispatchers.

Q. They do not make direct connection now, do they?

A. Not at this time, because our train comes in in the early afternoon.

Q. So this is the proposed arrangement of making direct connections?

A. That is correct.

Q. How do they get your train orders, now, that you speak of?

A. I did not speak of train orders; I spoke of figures by the train dispatchers.

Q. How do they get those now?

A. It is not now necessary, since the freight arrives in the terminal in the early afternoon, where it will lay over until the train is called for the North.

Q. Does that northbound train make up here, Mr. Sauls?

A. Yes, sir.

Q. It is not dependent upon any other schedule other than this schedule from the South?

A. That is all.

[fol. 655] Q. You made a statement, I believe, in answer to a question of Mr. Watkins as to why you would not operate this line from Columbia instead of from Gaston, did you, or not?

A. I think I answered that question.

Q. Did you not answer a similar question with reference to running it from Savannah instead of out of Garnett?

A. No, sir.

Q. Will you answer that?

A. What is the question, please?

Q. Why is the line operated from Garnett instead of from Savannah?

A. Because the principal business is done in the territory between Estill and Swansea, there being no reasons for operating it out of Savannah or Columbia, inasmuch as we shall have set-out cars at the principal points, as enumerated this morning.

Q. Neither Garnett or Gaston is what you call a transfer point, is it?

A. As a matter of fact, the truck is scheduled to leave Estill, but neither of those is a transfer point.

Q. Is there any difference, from the standpoint of the handling of freight, in handling it from a nontransfer point and from a transfer point?

A. None whatever. It takes the same labor to handle it at one point as it does at another.

[fol. 656] Q. So, then, it is just as economically sound and just as convenient and speedy for the railroad to run this truck line from nontransfer points as it would be run from transfer points such as Columbia and Savannah?

A. For the purpose for which this truck is to be operated, yes, sir. More so.

Q. Would you mind telling us what was the principal commodity shipped out of Gifford?

A. The principal commodity shipped out of Gifford is peas that go to various places over the country for planting. In other words, the people at that point raise a lot of peas of various kinds which they ship out over the country.

Q. For seed?

A. Seed.

Q. Are those shipped in carload lots, principally, or less than carload?

A. Less than carload. In fact, I think all of them are less than carload.

Q. If you have the exact tonnage that was hauled into the other set-out points, would you give us that?—Swansea, North, and Denmark.

A. Swansea had 301 tons inbound, 184 outbound, a total of 485. North, 539 tons inbound, 447 outbound, total 986. Denmark, 172 inbound, 103 outbound, a total of 275. That is tonnage only for Denmark proper. This car will also con-
[fol. 657] tain less-than-carload freight for delivery to the Southern Railroad and the A. C. L. in interchanging. Fairfax, 132 tons inbound, 105 outbound, a total of 237. And this car will also contain freight to be delivered to the C. & W. C. Railroad, the interchangers.

Q. Does that include only less-than-carload freight?

A. That is true, yes.

Q. I believe you said with certain exceptions as to cotton and other things?

A. I believe I said on the outbound movement this tonnage did include the cotton which moved on LCL rates at times.

Q. I understood your testimony to be that this truck line would not pick up any freight other than that now offered to the railroad at its regular stations?

A. That is correct, yes.

Q. Then, Mr. Sauls, I ask you if the public which ships on this truck line will be given any advantage over the present operation which you have?

Mr. Abeles: Mr. Chairman, it seems to me that Mr. Sauls dwelt at considerable length on that very question on direct examination, and while I do not want to interrupt or foreclose counsel for the intervenors, I think what Mr. Sauls would say in response to that question would be purely repetitious.

Mr. Turner: I should like to have it answered.

[fol. 658] The Witness: That question was not asked.

Mr. Abeles: Will you repeat the question? Perhaps I misunderstood it.

Mr. Turner: Read it.

(The reporter reads the question, as follows: "Then, Mr. Sauls, I ask you if the public which ships on this truck line will be given any advantage over the present operation which you have?")

Mr. Abeles: By that question you mean the shippers using the truck service?

Mr. Turner: If the witness does not understand it, he may state so, and I will ask it over again.

Mr. Abeles: I want the question perfectly clear in my own mind, so that I may be sure the witness understands it. I think I have the right, as counsel, to understand the question.

The Witness: You said outbound, didn't you?

Mr. Turner: Either way.

The Witness: Outbound there will be no advantages or speeding up of less than carload freight. Inbound, it will be delivered considerably earlier than by present train service.

Q. Would that apply to every point—that there will be quicker service on inbound freight?

A. Yes, sir, to every station. Not to the same extent. [fol. 659] Q. In other words, a person who had a shipment originating in Savannah just in time for your present train might actually have it lie over on the proposed schedule? Isn't that right?

A. That would be right if we received anything early in the morning, yes, sir.

Q. Would the same thing be true southbound from Columbia?

A. We could not, as a matter of fact, receive freight early enough at our warehouse to get it out on the morning train in either direction, as the trains are scheduled to depart from these terminals before the warehouse is actually opened.

Q. On shipments, we will say, from Norway, that shipment presently might make the morning train in Columbia, is that not right?

A. It might do that, yes, sir.

Q. And under the proposed plan it would be carried by the truck to a set-off point and then loaded at night—is that not so?

A. That is correct, yes, sir.

Q. And then a shipment by these people on this particular route might by your proposed plan be delayed?

A. No. Because the train gets into the terminal too late for delivery on that particular day, anyway, and under this plan it would still be at the terminal for next morning's [fol. 660] delivery.

Q. How about the man that ships from Norway north?

A. That is a different question. There might be some speeding up in that.

Q. So it is a matter that some may be benefited and some may not be benefited, is it not?

A. Every place will be *eb*nefited on its regular inbound business from the transfer points. Others may get the same service as at present.

Q. And some may get a delayed service?

A. Slightly.

Q. In effect, it amounts to improving the present rail service?

A. It amounts to improving the present rail service on less-than-carload freight inbound, but the big improvement that we are seeking is the advantages to be gained on the carload business outbound that is not merchandise.

Q. One other question, and I am through. On this big shipment out of Gifford, do you know whether or not you operate any special trains handling that?

A. We do not.

Q. Do you not operate some special trains on this route during the seasonal movement?

A. We run special trains during the heavy movement of watermelons when one train will not accommodate the [fol. 661] shipments offered.

Q. What is the principal watermelon-shipping point?

A. All the way from Sycamore to Estill.

Q. What is the watermelon season?

A. It usually starts around the first day of July. This year it will be a little later.

Mr. Turner: That is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Sauls, it was at sometime during your cross-examination this morning that you were asked the number of train stops which would be eliminated by the truck service. How many did you say could be done away with?

A. I estimated fourteen. There are fifteen stations involved, with the possibility of thirty stops, but inasmuch as the business is so light in a number of places I estimated it at fourteen, which I think would be correct.

Q. That is less than fifty per cent of the total possibility?

A. Yes, sir.

Q. I think you gave you estimation of the savings in fuel which would result from those eliminations. What was that figure, approximately?

A. At $2 per stop, for 26 days in the month, it would be $728.

[fol. 662] Q. Is $2.00 a stop the standard used in estimating fuel consumption?

A. That is less than the standard.

Q. Less than the standard?

A. Less than that quoted by the American Association of Railroads.

Q. How much do you estimate your truck service would cost a month?

A. I said, roughly, around $350. It might be a little more.

Q. What does that amount to per mile of operation?

A. I think, roughly, around eleven cents a mile. That is what they are costing now in other territories.

Q. Did you mention where that other operation is?

A. No, sir.

Q. Will you give it now?

A. Between Lyons and Rhine, Georgia, in the Alabama District.

Q. Is there any essential difference in the conditions which will surround the Garnett-Gaston service from those that obtain between Lyons and Rhine?

A. The only difference is that there will be a little more mileage on this truck. I figure the tonnage to be handled will be less.

Q. Then in your opinion, Mr. Sauls, the savings to be ac-[fol. 663] complished by these savings in train-transportation costs will more than offset the additional cost of the truck service?

A. Since figuring it out, yes, sir.

Q. Mr. Turner asked you whether any change in train service was contemplated in connection with the proposal here under consideration. I am not sure that you made it clear for the record just what that change would be.

A. The only change in train service was, as stated this morning, a change of Trains 75 and 76, now operating between Columbia, South Carolina, and Savannah, Georgia, from a day service to a night service.

Q. And no change is contemplated north of Columbia?

A. None that I know of.

Q. You also stated, in response to a question from Mr. Turner, that there would be no benefit to outbound shipments using this truck service. Is that correct?

A. Yes, sir.

Q. Let me ask you about a shipment from Olar to Denmark, a distance of approximately ten miles, I believe. Wouldn't that service be improved by truck?

A. It would if it were delivered at the station in time. However, with the early arrival of the truck, I don't think any shipments would be delivered to the station early enough for delivery on the same day.

[fol. 664] Q. In any case in which a shipment is delivered at the station before the truck passes that station, the truck would pick it up, would it not?

A. That is right.

Q. And if the shipment went from one non-set-off station to another, in such a case the truck, of course, would take it, would it not?

A. That is right.

Q. And in those circumstances there would be some benefit to the outbound shipment?

A. Yes, some three or four hours, in most cases.

Mr. Abeles: That is all, sir.

Mr. Turner: I want to ask two more questions.

Chairman Darby: Yes, sir.

Recross examination.

By Mr. Turner:

Q. Mr. Sauls, how much would you estimate of the tonnage you have given us (less-than-carload shipments) is handled by special seasonal trains—special produce trains?

A. No less-than-carload tonnage would be handled by those trains.

Q. None of this tonnage you have given us would be handled by those trains?

A. No. They are put on simply to handle the perishable traffic.

[fol. 665] Q. What would you say about the carload tonnage traffic on this line?

A. During the perishable season probably 100 cars a day.

Q. In the nonperishable season?

A. In the nonperishable season, probably eight to ten.

Q. Do the carload shipments go to any particular points as against other points on this route?

A. I do not understand that question.

Q. What are the largest shipping points or receiving points in this territory?

A. Estill is really the largest shipping point in the nonperishable season.

Q. And that would receive what proportion of the inbound freight during the nonperishable season?

A. I am speaking now of the outbound shipment, eight to ten cars a day. It would probably run 50 per cent.

Q. Assuming that the tonnage you have given us of less-than-carload shipments were equally distributed over the entire year, have you made a calculation to determine whether or not one truck could handle that?

A. Yes, sir.

Q. Could it?

A. Yes, sir.

Q. In estimating that you could operate your truck along this route for $350 a month, have you or have you not [fol. 666] calculated the mileage which you propose to operate?

A. Yes, I have calculated the mileage.

Q. How many days do you expect to operate this truck?

A. Daily except Sunday and national legal holidays.

Q. What do you calculate the mileage to be per month?

A. I had not figured it per month; it is about 130 miles per day.

Q. Is the distance of the route 65 miles?

A. Eighty-five miles.

Q. Does he not make a round trip each day?

A. Wait a minute there. I was figuring in my head. I was wrong; it would be 170.

Q. You estimate it would cost you between ten and eleven cents a mile to operate?

A. Yes, sir.

Q. Do you know what the Bureau of Standards calculates as the cost to operate a truck in this kind of commerce?

A. I do not.

Mr. Turner: All right, sir.

The Chairman: Any further questions?

Mr. Abeles: Nothing more.

The Chairman: You may come down, Mr. Sauls.

Mr. Abeles: Mr. Stanley next.

Mr. Chairman, the testimony that Mr. Stanley will now give I understand will pertain to both the proceeding in [fol. 667] Docket No. MC 86687 and that in Docket No. MC 86687, Sub No. 1.

W. L. STANLEY was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanley, please state your name, residence, and occupation.

A. W. L. Stanley; residence, Atlanta, Georgia; Vice-president, Seaboard Air Line Railway Company, and Chief Public Relations Officer for the Receivers of that company.

Q. Mr. Stanley, are you the official of the Receivers and of the corporation charged with the responsibility of framing the policy of the railway with respect to the establishment of auxiliary truck service.

A. In cooperation with the Receivers and other officers of the company, yes.

Q. Will you state now the general purpose and policy that has been followed by the Receivers and the company in establishing this auxiliary truck service?

A. We have studied various sections of the railroad, our objectives being, first, to improve the handling of less-than-carload freight and to expedite its movement and, second, to enable us to expedite the movement of carload freight through the relieving of our local freight crews of the handling of less-than-carload business. Those two things have [fol. 668] been the principal objectives which we have had.

Q. Have we any purpose, in establishing these services, to supplant our rail-transportation operations or service?

A. Absolutely no, for the reason that there is no transportation in the world that is as inexpensive as railroad transportation, provided you have a sufficient volume of business.

Q. Mr. Stanley, where, throughout the Seaboard system, are truck services operated in conjunction with rail service other than at the points involved in these proceedings.

A. Before I answer that question I should like to amplify my answer to the first question by saying that our principal purpose in all of these studies and in the inauguration of these truck lines——

Mr. Turner: Do I understand that this testimony is confined to these two applications?

Mr. Abeles: Yes, sir.

Mr. Turner: Then, as I understand it, the testimony which Mr. Stanley is about to give is irrelevant.

The Witness: I simply wanted to say that our chief objective was to co-ordinate rail and truck service. What I mean by that, of course, is obvious—haul partly by rail and partly by truck. Now, the question that you asked me, Mr. Abeles, was what?

By Mr. Abeles:

Q. On what other parts of the system, other than the lines [fol. 669] involved in these proceedings, are we operating truck service, and a brief history of those operations.

A. The first service of this character that we established was between Hamlet and Monroe, North Carolina, a distance of 54 miles, which was put on about five years ago. The exact date I do not know. We then established a service between Drifton and Monticello, Florida, paralleling a branch line between those places, a distance of about four miles. On January 1, 1935, we established a truck service between Morriston and Waldo, Florida, approximately 55 miles in length. At the same time we put on one between Tampa and Brooksville, Florida, a distance of 55 miles. Subsequently, on dates that I do not recall but I think all during the year 1935 or probably one or two of them in 1936, we established a service from Jacksonville to Wildwood, Florida, and subsequently extended it to Tampa, Florida, a distance of 212 miles; we put on one between Fernandina and Yulee, Florida, a distance of 12 miles, also paralleling a branch line; and in the summer of 1936, as I now recall it, we established a truck service between Rhine and Lyons, Georgia, a distance of 58 miles. The total truck service that we now have in operation covers 450 miles of highway.

Q. And that is your experience in truck operation—extending over a five-year period, I believe you said?

[fol. 670] A. Yes, sir, beginning about five years ago.

Q. Are all the truck services which have been instituted still in service?

A. Yes, sir, they are.

Q. Have they fulfilled the purpose for which they were intended?

A. Yes, sir.

Q. Has the Seaboard, to your knowledge, ever inaugurated a truck service which has been subsequently withdrawn?

A. I do not know of any service that has been withdrawn except perhaps one that we had on several years ago from Norlina to Hamlet, that was put on during the time when we had a very limited number of passenger trains, and primarily for the purpose of handling United States mail. Norlina and Hamlet both are within the State of North Carolina.

Q. And that, you say, was a limited service?

A. A limited service, yes, sir.

Q. From our past experience, do you feel that the Seaboard staff organization is fully equipped to conduct truck service efficiently?

A. Yes, sir, we think that we have successfully done it so far, and we think we know how to do it.

Q. Have you a copy of the annual report of the Seaboard for the year 1936?

A. Yes, sir.

[fol. 671] Q. Will you state for the record the figures shown by the income account in that statement for that year?

A. The total railway operating revenue of the Seaboard system for the year 1936 was $38,346,055.37. After the payment of operating expenses and taxes we had left a net railway operating income of $2,920,582.99.

Q. We had some other income, did we not?

A. We had income from other sources of $356,168.24, making a gross income of $3,276,751.23 available for the payment of interest and other fixed charges.

Q. That gross income figure represents income from which have been deducted all expenses except fixed charges, does it not?

A. It is what is left after you have paid operating expenses and taxes.

Q. Does you annual report show the investment account of the railway?

A. It does.

Q. Will you please state what that is?

A. Shown on page 16, the investment in road and equipment as of December 31, 1936, is $244,941,795.65. Total assets were $280,121,079.25.

Q. From the statement that you have just read, is there any doubt of the financial ability of the applicants to establish the truck service here involved?

[fol. 672] A. Absolutely none. Certainly no more than there might be any doubt as to the ability of the Receivers or the railroad to pay the operating expenses of their rail lines.

Q. The costs involved are comparatively insignificant in comparison with any other major rail operation, are they not?

A. Negative, yes, sir.

Q. From your experience with the truck operations which have been conducted by the railway up to the present time, is it your opinion that the proposal which we have here under consideration will justify itself from a financial standpoint?

A. It is.

Q. Is there anything else you care to say, Mr. Stanley?

A. I might say this—that I have kept in very close touch with the results of these operations which we have had on various parts of the railroad, and I know that they have had two very outstanding results: First, the expediting of less-than-carload freight delivered to the railroad for transportation and, second, the hastening of the movement of carload freight as a result of local trains' being relieved from doing that work, and, in many instances, the ability of the local freights, operating at night, to switch industries and not disturb the operation of the plants during the daytime.

Q. Limited in the manner which we propose, have you [fol. 673] been able to form an opinion upon the effect of the truck service which we are here proposing upon independent competitive motor carriers?

A. Based upon a study which I made of two operations of ours in Florida, I have. Those two operations are the ones that I referred to a while ago, between Morriston and Waldo, Florida, and between Tampa and Brooksville,

Florida, and which were established on January 1, 1935. The reports of our competitors, the independent common-carrier-truck operators in that same territory, for the years 1935 and 1936, made to the Florida Railroad Commission, showed that their earnings increased after the inauguration of our service. I am speaking of their total earnings.

Q. You heard the testimony of Mr. Garner and Dr. McLeod this morning, stating their attitude towards this proposal, did you not?

A. I did.

Q. Will you comment on that testimony?

A. I would not be so foolhardy as to make the statement that under no conditions would the Timmonsville branch of the railroad be abandoned, but I will state very positively that in the proposal to inaugurate this service no such possibility has been considered, nor is it sought to be undertaken with a view to bringing about that result. If I may give my opinion about the result of this operation, I would like [fol. 674] to say this. The major part of the business that we handle to Timmonsville is carload business. Without having the exact figures, the less-than-carload business represents a very small percentage of the total business which we do. The earnings in that territory are very, very thin. Trains will have to continue to handle the carload business, because under no circumstances or conditions that I can conceive of would we ever undertake to substitute a truck for train service to handle carload business. Therefore, if we may increase our revenue, as we hope we may do by the use of trucks on less-than-carload business, it seems that it would have the effect of relieving any apprehension as to the possibility of tearing up those rail lines, because we would have the augmented less-than-carload business to add to the carload business which we may continue to handle.

Q. Is there anything further that you can say?

A. I don't know of anything. I am anxious to quit.

Cross-examination.

By Mr. Watkins:

Q. Do you contemplate any additional traffic moving over your line by this proposed new service?

A. We hope very much that we shall be able to get some additional business.

Q. Do you think that that additional business will be taken from competitive transportation agencies?

[fol. 675] A. Well, now, it depends altogether, Mr. Watkins, upon what you mean by competitive transportation agencies.

Q. Existing transportation agencies.

A. I don't know whether what you and I term a fly-by-night operation by truck that you can hire a transportation agency or not. Probably we shall get some of that business. My own judgment is that it will probably result in merchants who prefer patronizing the railroad discontinuing, to some extent, the use of their own trucks if they can get as prompt delivery, by the co-ordinated rail and truck service as they can get by their own service.

Q. I understood the testimony in this series of cases to indicate that about 85 per cent of the traffic which would move over this service originated at four distant points. Do you think that it is true that that would be moving in private trucks today?

A. Well, I know that those private trucks are rather extensively used.

Q. You do not think that some person would use a private truck to move freight from St. Louis, Missouri, or Chicago, Illinois, to Denmark and Norway, do you?

A. No, I suppose he would have to get some way to cross the ocean.

Q. I am speaking of South Carolina. Then, to the extent that your business would increase from those more distant [fol. 676] points, the traffic would not be diverted from private carrier but from some form of common carrier operation, either by rail or motor truck?

A. Well, I doubt, Mr. Watkins (this is my opinion only) if you have got from many of the large shipping points, especially in the West—Chicago and St. Louis, through truckage service in common carriage in some established line. The freight that we get, of course, comes from all over the United States. It concentrates at some point on our line, where it goes through the funnel—or, rather, in the reverse order—and is distributed out to the smaller places. I may say this for you, because I am trying to draw a perfectly fair picture of this situation. I do not think anybody knows exactly the extent of the inroads which the truck business has made upon the business of the railroads. I do know that in Florida, as I stated in another case yester-

day, for the five-year period from 1930 to 1935 the earnings of the common-carrier truck lines in that State increased 75 per cent, while the earnings of the railroads decreased 33 per cent. Now, I have given you my opinion, that we have a right to every legal, proper way to try, so long as it is in the public interest, to bring back some of that business to the railroads.

Q. You spoke of knowing generally the effect of this coordinated truck and rail transportation. Are there inde-
[fol. 677] pendent truck-line competitors of yours? Will you please state the names of the independent truck-line competitors along the routes that are here involved?

A. I do not know them.

Q. Then how do you know the effect upon them, if you do not know them?

A. I do not know the effect upon them by these particular lines, because we have not established them.

Q. Take to Hamlet, for instance.

A. I do not know the effect on those particular people in there. I used the situation in Florida, which I had studied, as an illustration.

Q. But you do not know the effect upon the operations of your competing lines of your operation from Monroe to Hamlet, which has been in effect about five years?

A. No. I think that the Frederickson line and the Horton line, and perhaps others whose names I do not recall, are in that territory. The trouble I have had about that is this. To be frank with you, I tried to make some study of it; but I can not find in the reports of the public service commission for North Carolina, except for the last two or three years, any statements of the gross earnings in North Carolina of those lines.

Q. Have you made any study of the number of truck operations directly competitive with the Seaboard Air Line
[fol. 678] Railroad?

A. Not except as I might take up each particular case at the time that we sought to put on our service; and I even have not extended that study to the point of developing our competitors' operations here, because our goal is to coordinate our rail and truck service, which we would want to do regardless of whether there is a competitor in the territory or not.

Q. So for the purpose of this series of cases, you made no survey of the existing motor-carrier facilities paralleling your lines?

A. Not as a preliminary to the determination to establish this service.

Q. Nor as a preliminary to testifying in the case?

A. Well, I did not think it was necessary to have it in the case.

Q. I believe you started out with the premise that the reason why the Seaboard Air Line Railway is interested in this type of service is because they think there should be a co-ordinated truck and rail service, where the traffic would move partly by rail and partly by truck?

A. Where the major portion of the traffic would be moving partly by rail and partly by truck.

Q. Would you be willing for your applications to be limited to your handling this traffic partly by truck and [fol. 679] partly by rail?

A. I would not, because it would destroy the main purpose of our application, which is to run these freight trains at night and enable us also to take care of LCL freight from station to station.

Exam. McCaslin: Off the record.

(Remarks by the Examiner, outside the record.)

Chairman Darby: On the record. Proceed, Mr. Watkins.

By Mr. Watkins:

Q. I understand that the Seaboard Air Line Railway has now pending before the Interstate Commerce Commission eight applications for motor-carrier operations which, together with a presently established operation, practically cover the lines of the Seaboard from Richmond to the Georgia line and from Wilmington to Rutherfordton. Would the applicants be willing that the certificates granted under these applications be so limited as to prevent joint movement on any two of these proposed operations wholly by motor carrier?

A. We would not be willing to such an arrangement. As a matter of fact, Mr. Watkins (to clear up the record), there is a good deal of the territory in Virginia and in South Carolina and some in North Carolina that is not

covered by any application pending before the Interstate Commerce Commission.

Q. My question was referring only to that territory cov-
[fol. 680] ered by the eight applications and to the Monroe-Hamlet service which is already in existence. Is your answer still the same?

A. Yes, sir. I could give my reason for it, if you want me to. It has been explained in another case, but I might state it again, for the purpose of the record. If we had a shipment going from some point between Hamlet and Columbia to some point between Hamlet and Raleigh, where we do rearrange the train service, we should certainly not want to be put in a position where we could not transfer that from one truck at Hamlet, operating from the Columbia territory, to another truck at Hamlet, operating into the Raleigh territory.

Q. You want that possibility of through movement by motor carrier entirely left open?

A. I should rather refer to it as a local movement than as a through movement, because it is local movement I have in mind.

Q. The reason I refer to it as a through movement is because you have seen fit to divide your applications. For that reason I refer to it as a through movement.

A. No; I can explain how that happened. We have on the Seaboard Air Line Railway six operating divisions, in charge of six different superintendents. To all intents and purposes, except for the purpose of co-ordinating [fol. 681] through movements, those territories represent little railroads of their own. Now, in making up these applications for truck certificates, they were studied in respect to the several divisions of the railroad—what would be most desirable on those divisions, and especially in respect to their local situations, and with no idea on earth of co-ordinating those several movements except where they might happen to match up with each other.

Q. Do I understand that each of these applications represents truck operation in separate divisions of the Seaboard?

A. Every one of the eight that you spoke of; every one of them, as I recall it now, except the one from Hamlet to Columbia, that involves two subsidiary lines of the Seaboard. I think every one of them are separate divisions of the Seaboard.

Q. The McBee operation?

A. That is in the South Carolina Division.

Q. That is in the same division as the Hamlet to Columbia operation, is it not?

A. The McBee-Sumter operation is in the South Carolina Division, which is under Mr. Sauls' jurisdiction; and the Hamlet-Columbia is in the North Carolina Division, which is under Mr. Rogers' jurisdiction.

Q. What about the Hamlet to Raleigh operation?

A. On the North Carolina Division.

[fol. 682] Q. Under Mr. Rogers?

A. Yes, sir.

Q. And the Wilmington to Hamlet?

A. Is on the North Carolina Division, under Mr. Rogers.

Q. And the Monroe to Rutherfordton?

A. Is on the North Carolina Division, under Mr. Rogers.

Q. And the Raleigh-Henderson-Richmond?

A. Is on the Virginia Division, under Superintendent Terrell.

Q. And your Hamlet to Monroe operation?

A. Is on the North Carolina Division, under Mr. Rogers.

Q. What is the schedule of your truck on the Hamlet-Monroe run today?

A. I don't know, to be frank with you.

Q. How long has it been since the Seaboard has been able to earn sufficient money to pay its interest charges?

A. Since it was able to pay the interest on its indebtedness?

Q. Yes.

A. The Seaboard went into the hands of receivers on the 26th day of December, 1930.

Q. Has it ever been able to earn money enough to pay its interest charges since the receivership?

A. No, sir.

[fol. 683] Q. And had not for a few years prior thereto?

A. I would not say a few years. I would say the year 1930 was the first year for quite a period of years that we failed to earn our fixed charges.

Q. So, if the inauguration of this truck service costs the railroad any money, it would be taken from the sum that would be otherwise used to pay the fixed charges?

A. It will, according to our experience, and based upon our studies, not cost us any money but perhaps enable us to effect economies that will represent a saving.

Q. I am speaking now of the initial investment, to begin the service.

Q. You mean the cost of the trucks?

A. Yes, sir.

A. Well, my answer to it is the same. Those are just a part of the railroad facilities, those trucks—just as we would purchase a new car or a new engine.

Q. When you buy equipment you are taking away money that, if you did not buy that equipment, would go toward paying fixed charges?

A. And if we did not buy any equipment we would not be able to handle our business.

Q. Mr. Stanley, what is the difference between what you have earned for the past year and the fixed charges?

A. It is shown on the first page here, for 1936 (page 3, [fol. 684] Exhibit 1). The net deficit was $6,097,461.95.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Turner:

Q. You say that railroads are the cheapest form of transportation where volume is concerned?

A. Where you have the volume that is true.

Q. Is that true even as compared to water transportation?

A. I was speaking of land transportation.

Q. You mean rail compared with truck and airplane transportation?

A. Oh, we haven't gotten up in the air yet, but I think we are going that way.

Q. Do the Receivers of the Seaboard operate these truck operations where they have been inaugurated, or are they operated by other companies for the Receivers?

A. All of them are operated by the Receivers.

Q. Do you think you can operate a truck for ten cents a mile?

A. I don't think I am an expert on that, Mr. Turner. I think it varies with the character of the roads, the size

of the truck, the general terrain of the country, and other factors.

Q. You don't believe that you can operate one on glass for ten cents a mile, do you?

A. I really do not know. To tell you the truth, I have [fol. 685] tried to find out; but if anybody in this country knows exactly what it costs to operate a truck I have not found that gentleman.

Q. Do you know whether Mr. Manship, who testified before lunch, actually operates his business on Seaboard property, or not?

Mr. Abeles: I have not the slightest objection to Mr. Stanley's answering that question, but if Mr. Turner is going into every possible line of inquiry it will be endless. I should like to ask the Chairman to confine Mr. Turner's cross-examination to the testimony which Mr. Stanley has put in the record.

Exam. McCaslin: That is proper.

Chairman Darby: Mr. Turner, Mr. Stanley could only be cross-examined on what he has testified, and I do not think it is proper to cross-examine him upon some other witness's testimony.

Mr. Turner: The question of the credibility of Mr. Manship, who is a witness for the applicants, is a pertinent issue in this case. If he leases lands from or operates on lands owned or controlled by the Seaboard, it goes toward his credibility. I asked him if he knew.

The Witness: To be frank with you, I do not know. In fact, I do not think I ever saw the gentleman until this hearing.

[fol. 686] Mr. Turner: That is all.

Cross-examination.

By Mr. Watkins:

Q. Mr. Stanley, upon what do you base the authority of the Receivers to ask permission of the Commission to begin this motor-carrier operation?

A. The Receivers were directed by the Court to do whatever might be necessary to conserve and operate these properties.

Q. And that is the basis?

A. That is one.

Q. Have you any specific order of the Court allowing you to apply to the Interstate Commerce Commission for authority to operate motor vehicles?

A. I know of no specific order of the Court directing us to seek authority to operate motor vehicles.

Chairman Darby: Any other questions?

Mr. Abeles: That is all.

Mr. Abeles: We offer in evidence the annual report of the Seaboard Air Line Railway and its Receivers for the fiscal year ended December 31, 1936, to which Mr. Stanley referred in his testimony, and ask that it be received as an exhibit.

The Chairman: Without objection it is so ordered, and it will be received in evidence and marked Exhibit No. 1.

(Exhibit No. 1, Witness Stanley, received in evidence.)

[fol. 687] Mr. Abeles: I assume that the Commission desires two additional copies of that exhibit?

Exam. McCaslin: I believe that it is necessary to have two more.

Mr. Abeles: I desire to offer in evidence, also, the evidentiary portions of the application in this docket.

Chairman Darby: They will be received as evidence.

Mr. Abeles: That, Mr. Chairman, concludes our testimony in chief upon the hearing of Docket 86687 and Mr. Stanley's testimony in Docket 86687 and 86687 Sub. No. 1.

The Chairman: We will take a few moments' recess, gentlemen.

(Whereupon a recess of ten minutes was taken.)

Chairman Darby: Let's resume, gentlemen. Proceed, Mr. Abeles.

Mr. Abeles: I am now calling Mr. Sauls to testify upon the application in Docket MC 86687, Sub. No. 1, covering the proposed operation between McBee and Sumter, South Carolina.

C. H. Sauls was recalled and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Sauls, will you describe the operation which you propose to establish in this proceeding?

A. We are proposing to put on a truck to leave McBee, South Carolina, at 6:00 a. m., going through Hartsville, then [fol. 688] to Timmonsville, then to Sumter, back to Bishopville, then to Darlington, and back to McBee, to handle the less-than-carload freight that is now being moved by train and that will be at McBee for transfer to the truck.

Q. And that truck will leave when, did you say?

A. Six a. m.

Q. And the operation will consume how long?

A. I figure around six hours.

Q. Returning to McBee at about noon?

A. At about noon.

Q. What is the distance of that route?

A. Approximately 134 miles.

Q. How often do you propose furnishing this service?

A. Daily except Sunday and national legal holidays.

Q. Will you describe the purpose of establishing this service?

A. The purpose of establishing this particular service is to make deliveries at those points during the early morning hours, whereas we can not now make them until noon, or later in many cases, by train.

Q. What is the schedule of your present train service?

A. The present train service is due to leave McBee at 9:55 a. m., arriving in Hartsville at 10:50 a. m.; leave Hartsville for Timmonsville at 10:55 a. m.; arriving at Timmonsville at 12:10 p. m. Leaving Hartsville for Sumter at 11:15 [fol. 689] a. m.; arriving at Sumter at 1:15 p. m. And leaving Hartsville for Darlington at 11:00 a. m., arriving at Darlington at 11:40 a. m.

Q. Those services from Hartsville to Darlington, Timmonsville, and Sumter are separate operations, are they not?

A. They are separate operations, all of which are mixed trains and handle United States mail and express.

Q. Does the proposed truck service reach any station or territory not now served by rail?

A. No, sir.

Q. You stated that the purpose of the establishment of the service was to expedite less-carload deliveries, did you not?

A. Yes, sir.

Q. Will you please illustrate how that will be accomplished?

A. Take a shipment arriving at McBee in a set-out car for this territory. It would now leave McBee at 9:55 a. m. and would arrive at Sumter at 1:15 p. m. or later, while the same freight moved by truck would leave McBee at 6:00 a. m. and arrive at Sumter at 8:05 a. m.

Q. Approximately three and a half hours earlier, is it not?

A. That is about five and a half hours earlier.

Q. Will there be a corresponding improvement to Timmonsville, Hartsville, and other points on the line?

A. Yes, sir.

[fol. 690] Q. Will there be any through service performed by the truck which we shall establish on the McBee-Sumter route and any other truck route now operated by the railway?

A. There will be none and no connection with any now operated by the railroad; but there might be an occasional shipment, if the other service is established between Hamlet and Columbia, that would catch this truck.

Q. That would catch which truck, the McBee-Sumter truck or the Hamlet-Columbia truck?

A. The McBee-Sumter truck.

Q. You are speaking, then of inbound shipments?

A. Only.

Q. Will there be any effect upon outbound movements?

A. There will not.

Q. Then the primary purpose of this, as I understand it, is to expedite the delivery of inbound less-carload shipments. Is that correct?

A. That is correct.

Q. Have you reason to believe, Mr. Sauls, that this service is desired and needed in the territory involved?

A. Absolutely.

Q. Please explain that a little further.

A. The receivers of freight in this territory frequently complain of the late deliveries, and under the existing amount of traffic handled over these branch lines and the [fol. 691] necessity for making connection with the main-line fast and express trains we can not change the schedule now existing, and it is therefore the only way that we can improve the service without putting on additional trains.

Q. Is there sufficient traffic in that territory to justify additional train service?

A. There is not.

Q. Would additional train service be costly?

A. Very costly.

Q. Can you establish this truck service for less than you could the train service?

A. Very much less.

Q. Is there any purpose in this proposal to supplant existing rail service with truck service or to curtail in any way the rail service we now render?

A. There is not, as we have a minimum of service on those branch lines now.

Q. Do you propose to carry anything but less-carload shipments in these trucks?

A. We do not.

Q. Is there a substantial movement of carload shipments over the McBee-Sumter rail line?

A. Well, there is a very good movement of carload business into and out of Hartsville, Darlington, Florence, Pamplico, and to a lesser degree on the other lines.

[fol. 692] Q. Is there any movement of less-carload traffic to points north of McBee on the main line of the Seaboard between Hamlet and Columbia or from points north of Hamlet moving into the McBee-Sumter territory?

A. Very little, with the exception of the long-haul business that comes into Hamlet Transfer in the regular transfer cars.

Q. At what time is the train from Hamlet to Columbia scheduled to pass McBee?

A. I do not have the exact figures, but it should be about 8:30 p. m.

Q. Then as to traffic received from that train, the effect of this proposed operation would be merely, as I understand it, to expedite the deliveries the following morning?

A. That is correct.

Q. As long as carload shipments continue to move into the McBee-Sumter territory, would it be possible for us to abandon train service?

A. It would not. There is a carload business moved each and every work day.

Q. Then as long as carload shipments are moving into this territory train service would be indispensable?

A. Absolutely.

Q. You have already stated, I believe, that that train service is at a minimum?

[fol. 693] A. Yes, sir.

Q. So that there could be no curtailment.

A. No curtailment.

Mr. Abeles: That is all, Mr. Chairman.

Chairman Darby: Any questions?

Cross-examination.

By Mr. Watkins:

Q. Mr. Sauls, when did you say the rail service leaves McBee?

A. 9.55 a. m.

Q. There is just one train a day?

A. That is all.

Q. And arrives at Sumter—is that your final point?

A. Yes. At 1.15 p. m.

Q. And your proposed service by truck would leave when?

A. Six a. m.

Q. And arrive at destination when?

A. Sumter at 8.05 a. m.

Q. What is the difference in the hours consumed by the two services?

A. In what way?

Q. Well, if you leave at approximately 10.00 o'clock by rail and reach there at 1.15, that would give you three hours and twenty minutes, wouldn't it?

A. Yes. The difference in it is that this is branch-line territory, and these trains are not only restricted to slower [fol. 694] schedules than they would be on the main line but there are connections involved at Hartsville. The same crew leaving now at McBee does not now go through to Sumter.

Q. Couldn't you push up your 9.55 train to 6.00 in the morning and accomplish your service by rail in practically the same time?

A. We could not do that, because this is a mixed-train service and makes passenger connections with No. 1 and because it also carries United States mail and has to make the connection.

Q. Your freights from the North to points on this branch line arrive at McBee about 8.30 p. m.?

A. That is right.

Q. And they spend the night in McBee, leaving there at 9.55 the next morning?

A. That is right.

Q. If the train left McBee over this route shortly after 8.30 p. m. tonight it would accomplish delivery during the night to all of these points, would it not?

A. That is true, but it would be a very complicated crew operation, due to the physical condition and character of these branch lines, as well as a very expensive operation.

Q. Are you familiar with the application filed by the Seaboard governing the proposed service between Hamlet and Columbia, which involves service on branch lines through [fol. 695] Cheraw, Chesterfield, Pageland, and Jefferson?

A. Only to the extent of hearing the testimony yesterday. Before that I knew nothing of it.

Q. Isn't the territory involved on that shoot over the two branch lines about the same sort of territory as that involved here?

A. No, sir.

Q. What is the difference?

A. Around Bishopville, Sumter, Timmonsville, Darlington, in my opinion, is a much better agricultural territory, and therefore more business is involved.

Q. Then the only difference is the amount of business involved?

A. As to the amount of business on the other lines I don't know. I have the figures on these lines.

Q. But the only difference in the operating line that you can conceive of is the larger amount of business on this McBee operation as compared with the amount of business out from McBee on the other side?

A. Yes, sir, that would be the only difference, except that the C. & L. is one straight line of railroad, for a short distance. The C., M. & C. likewise is one straight short

line, whereas the territory now under discussion has one branch line extending from Hartsville, South Carolina, to Poston, South Carolina, another extending off this branch [fol. 696] line from Hartsville, South Carolina, to Sumter, South Carolina, and another extending off this line from Lydia, South Carolina, to Timmonsville, South Carolina, all of which mileage, in operating a crew, has to be doubled.

Q. I was not speaking of the rail operation; I was speaking of the difference between the two proposed truck operations.

A. I am not sufficiently familiar with truck operations in the other territory to draw the comparison.

Q. Although both of them run into the town of McBee?

A. I think the testimony yesterday was that one of them came down through the town of McBee into Columbia.

Q. And both of them are a circular movement?

A. Yes, to some extent.

Q. And the proposed service over the Hamlet-Columbia branch is a night service by truck?

A. I think that was the testimony yesterday.

Q. But the proposed service over this branch is a day service?

A. That is correct.

Q. Why the difference?

A. I can only speak for the territory under discussion. My judgment in the matter is that we can leave McBee on this particular truck and make early-morning delivery, and for that reason it would not be necessary to make it a night operation.

[fol. 697] Q. Would it be possible to make it a night operation over this branch?

A. It would be entirely possible.

Mr. Watkins: I think that is all.

Cross examination.

By Mr. Turner:

Q. Mr. Sauls, the truck operation is intended to operate between what points? Name the principal towns and the way it goes?

A. McBee, Hartsville, Lydia, then to Timmonsville, from Timmonsville to Sumter——

Q. From Timmonsville to Sumter you intend to go on Route 76?

A. I believe it is Route 76.

Q. You do not now operate between Timmonsville and Sumter directly by rail?

A. No, we do not.

Q. You would actually go through Lynchburg, Mayesville, and other small points?

A. Probably so; I am not familiar with the stations.

Q. When you stated to your counsel that you did not cover any town other than those on the railroad, I understand you meant not to stop in those towns?

A. That is right.

Q. But you do actually go by a highway that does not parallel your railroad?

[fol. 698] A. Yes, sir.

Q. From Sumter you go back to Bishopville?

A. Yes, sir, Bishopville, then to Darlington, and from Darlington back to McBee.

Q. That entire circuitous trip is only 34 miles?

A. I testified that it would be around 134 miles.

Q. I beg your pardon. How does Hartsville compare with other shipping points in the state in the matter of traffic handled by the Seaboard?

A. In the State of South Carolina?

Q. Yes, sir.

A. I could not answer that question.

Q. Is it a heavy shipping point or light?

A. Oh, it is a heavy shipping point.

Q According to this railroad map, there is a pretty straight stretch from McBee through Darlington and Florence to Poston, isn't there?

A. Reasonably so. There are a large number of curves.

Q. As I understand it, this branch line runs out from Hartsville to Bishopville and Sumter?

A. That is right.

Q. And there is another branch line which you now operate from Hartsville to Timmonsville and Lydia?

A. That is right.

Q. What is the rail mileage, if you know, approximately, [fol. 699] from Lydia to Timmonsville?

A. From Lydia to Timmonsville is 17.1 miles.

Q. The crew that runs on that branch line, then, makes approximately only 34 hours a day?

A. No, that crew runs from McBee to Timmonsville and and back.

Q. Then there is another crew that runs from Lydia to Sumter and back?

A. No, there is another crew that runs from Sumter to Poston, in one direction, and one from Poston to Sumter, by Hartsville.

Q. Have you the less-than-carload tonnage into Timmonsville before you now?

A. Yes, sir.

Q. What is it?

A. For the thirteen-months' period there was only 300 tons in and 140 tons out, or a total of 440 tons.

Q. Would you or would you not be permitted to take mail on this truck line?

A. No, sir. As a matter of fact, there will be no mail to handle, because there would be no connection for it.

Q. Do you know, as a matter of fact, whether they are handling mail on trucks now.

A. We are not handling mail on any trucks that I operate.

Q. Have you made inquiry as to the right to handle it?

A. I have not.

[fol. 700] Q. What is the total tonnage into Hartsville, if you have it?

A. The LCL tonnage into Hartsville was 3,547 tons, inbound; 5,429 outbound; or a total of 8,976 tons. However, the biggest portion of that tonnage, while it moves on LCL billing and LCL rates, comes from the mills in that territory, in the way of cones and things of that sort, that is loaded and really moves in carload lots. The tonnage of LCL freight, as handled at more ordinary stations, into Hartsville is light.

Q. What is the carload tonnage into Hartsville?

A. I haven't that figure, but I would say possibly ten loads a day.

Q. Ten carloads a day?

A. Yes.

Q. What about the less-than-carload tonnage into Sumter?

A. Into Sumter, 685 tons inbound; 223 outbound; or a total of 908 tons.

Q. Bishopville?

A. Bishopville, 396 tons inbound, 107 outbound; total, 503.

Q. Darlington?

A. Darlington, 425 tons inbound, 200 outbound, or a total of 625.

Mr. Turner: Nothing further.

[fol. 701] Redirect Examination.

By Mr. Abeles:

Q. Mr. Sauls, Mr. Watkins asked you about the possibility of accomplishing the purpose we have in mind here by advancing the departure of our train from McBee from 9.55 a. m. to 6.00 a. m., the scheduled time of departure for the truck. You said that would be impracticable because it would break the connection with train No. 1. From what point does that train come?

A. Train No. 1 originates in New York and picks up the mail from all Eastern points all the way down.

Q. At what time is it scheduled to arrive at McBee?

A. I think it is about 9.40; I don't have the minute figure.

Q. It is considerably later than 6.00 a. m., though?

A. Oh, yes. We make connection with it on this train and get the train out as quickly as possible after it arrives.

Q. Then the operation of our McBee-Sumter service is articulated with the operation of train No. 1?

A. Yes, sir.

Q. Mr. Watkins, I believe, also asked you about the possibility of performing night service instead of day service on this route by truck. Would there be any purpose in scheduling this truck at night instead of by day?

A. I don't see any, because we would be making early-morning delivery and operating in daylight.

Q. The latest delivery, I believe you said, would be at [fol. 702] Sumter at about 8.00 or 8.15 a. m.?

A. No; the latest delivery would be at Darlington around ten a. m.

Q. And that is in ample time for deliveries to receivers?

A. Yes, at that particular point.

Q. Mr. Turner, I believe, pointed out that a certain part of its route would traverse towns not reached by our rail line. Is that correct, or is it not?

A. That is correct.

Q. I am not sure you made it clear. Shall we serve those towns?

A. We will not.

Q. Shall we operate with closed doors through those towns?

A. Yes, sir. We will only serve the stations that we are now serving by train.

Q. Have you a statement of the less-carload tonnage received at and forwarded from all stations served by this route?

A. Yes, sir.

Q. I wish you would give that for the record.

A. That is all in the record, with the exception of the station of Lydia, which received 23 tons inbound and had 4 tons outbound, or a total of 27.

Q. You have previously given the tonnage for all the other stations?

[fol. 703] A. Yes, sir, under the questions of Mr. Turner.

Q. Do you know any truck service operated into this territory?

A. I do not; I am not familiar with the truck operations.

Q. In your opinion, will the form of service which we propose to render, confined, as it is, to rail stations and to traffic received from our rail service and delivered to our rail service at McBee, compete with the service performed by certified motor carriers, if there are any operating in this territory?

A. In my opinion not, for the reason that the merchandise which we are now handling in that territory is practically all merchandise which arrives at Hamlet, transferred during the day in merchandise cars from the various shipping centers at long distances, and is moved to McBee in carload lots.

Q. By rail?

A. By rail. There is very little merchandise in these stations that we are handling that is offered for short-distance movement.

Recross-examination.

By Mr. Watkins:

Q. Mr. Sauls, you are making that statement without any knowledge of the existing truck service in that territory?

A. Yes, sir.

Mr. Watkins: That is all.

[fol. 704] Recross examination.

By Mr. Turner:

Q. It would be entirely possible, Mr. Sauls, for your company at a subsequent date to change the present method of operating its trains in this particular territory, would it not?

A. No; I would say not, Mr. Turner. The schedules with which we connect have been established from New York and other Eastern points for a great many years; and for the past fifteen years, that I have personal knowledge of it, there has been very little change in the schedule of train No. 1.

Q. That is not what I mean. I mean the set-up of this particular territory. It would be entirely feasible, would it not, to operate a train from McBee to Poston, would it not, straight through?

A. It would be feasible, yes.

Q. And it is not practicable to handle all less-than-carload freight that you have to Hartsville and Darlington by truck?

A. It is not the intention to handle the less-than-carload tonnage going into the mills at Hartsville by truck, as these shipments are delivered direct from cars.

Q. The possibility of ever abandoning the rail lines into Hartsville and Darlington and Florence is very, very remote, isn't it?

[fol. 705] A. Yes; I do not see how it could be done.

Q. Yet at the same time you do not have much tonnage, either carload or less-than-carload, from Hartsville south through Lydia and Sumter.

A. We have at certain seasons of the year a very good movement of tonnage out of Timmonsville, especially tobacco shipments in carloads; and there is also a very good movement of carload business in and out of Bishopville. At the present time there is a considerable movement in connection with the Government work at Ashwood, just south of Bishopville.

Mr. Turner: Nothing further.

The Chairman: Any further questions?

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: The witness may be excused.

Mr. Abeles: That closes our case in chief, Mr. Chairman.

Chairman Darby: Have the interveners any witnesses?

Mr. Turner: Yes, sir. I call Mr. Massey.

J. H. Massey was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. You live in Columbia?

A. Yes, sir.

[fol. 706] Q. You are connected with what company?

A. New South Express Line.

Q. In what capacity?

A. Vice-president in charge of operations.

Q. What is the nature of its business?

A. General merchandise hauling and express business by truck.

Q. What is the nature of the organization of the business—is it a partnership or a corporation?

A. Corporation.

Q. Under the laws of what state is it incorporated?

A. South Carolina.

Q. What state do you cover, principally, in your operations?

A. South Carolina.

Q. Do you go into any other state?

A. Yes, sir, into North Carolina and Georgia.

Q. How long has the New South Express Line been operating over the routes which it covers now?

A. Since January 15, 1935.

Q. How long had its predecessors been operating over them?

A. Since 1928, I think is the correct date.

Q. State for the record whom you succeeded on those routes.

A. Well, the Piedmont Motor Express, Incorporated, of Greenville, and Bowman Transportation Company, of Bowman, South Carolina, was merged into the Piedmont-Coastal [fol. 707] Motor Express Corporation.

Q. And those companies, you say, had operated over these routes since 1928?

A. Yes, sir.

Q. Mr. Massey, in the direction and over the territory as covered by the application of the Seaboard Railroad (in the territory between Gaston and Garnett), state whether you operate in that territory.

A. Operate between Swansea and North.

Q. Do you touch the town of Gaston, too?

A. No, sir.

Q. You operate from Swansea to North?

A. Yes, sir, and on to Orangeburg.

Q. Is Woodford in between Swansea and North?

A. Yes, sir, it is.

Q. Do you operate through that town?

A. Yes, sir.

Q. Mr. Massey, state whether or not you have an intrastate certificate over the routes that you have just described and other routes that you operate over.

A. Yes, sir, we have.

Q. State whether or not you have certificates of authority from the Interstate Commerce Commission to do any interstate business over these routes.

A. No, sir.

[fol. 708] Q. Have you made application, or did you make timely application to the Interstate Commerce Commission under the grandfather clause in the Motor Carrier Act?

A. We did.

Q. Has there been any disposition of those applications by the Interstate Commerce Commission of which you have had notice?

A. No, sir.

Q. State whether you were actually in bona fide operation over this route mentioned, as well as other routes to which you will testify, on June 1, 1935.

A. We were, yes, sir.

Q. And have you continuously been operating over those routes since that time?

A. Yes, sir.

Q. State whether or not you are operating over those routes at present.

A. Yes, sir.

Q. What kind of service do you operate between Columbia, Swansea, Woodward, and North—is it daily, triweekly, or what?

A. Daily.

Q. State whether or not you operate between Sumter and Timmonsville.

A. Yes, sir.

[fol. 709] Q. State whether or not you operate into the other towns mentioned in the application of the Seaboard Railroad designated as between McBee and Sumter.

A. We operate in all except McBee. We do not go into McBee.

Q. What type of service do you render the people in all of these towns, with the exception of McBee?

A. Daily.

Q. Your truck on that route originates out of what point?

A. Sumter.

Q. State what time it requires to get shipments out of Columbia to any point mentioned in the applicant's proposed route, other than the town of McBee.

A. We have service leaving Columbia at 3.00 a. m.; arrives at Sumter around five. We have a truck leaving Sumter for Bishopville, Hartsville, and Cheraw at 7.00 a. m. We have another truck leaving Sumter (of course, this does not involve this application) going to Manning and Kingstree.

Q. What about Timmonsville?

A. We have a through truck running from Columbia to Florence, which leaves here at 3.00 a. m., that works stations between Sumter and Florence, arriving at Florence around 9.00 a. m.

Q. It arrives in Timmonsville about what time?

A. Well, about 7.45, I would say, or 8.00 o'clock.

[fol. 710] Q. State whether your company is able to take care of all the traffic that is being offered to it at this particular time.

A. Yes, sir.

Q. Are you able and willing to haul more traffic that you are hauling now?

A. Yes, sir.

Q. State whether or not the Seaboard Railroad has ever approached you or indicated a willingness to transfer freight to you.

A. No, sir, they have not.

Q. Would you be willing to take such traffic as they have for such points from them, either at Cheraw or Columbia, and make daily deliveries to those points?

A. We would.

Q. How would you approach such an arrangement? I mean, would you be willing for it, or anxious for it?

A. Yes, sir, we would be willing to furnish the service on any schedule that might be designated by them, provided that they did not want too many each day.

Q. Mr. Massey, does your company carry insurance?

A. Yes, we do.

Q. Do you include cargo insurance?

A. Yes, sir.

Exam. McCaslin: I should like to inquire there, on that [fol. 711] insurance question, do you carry all the insurance that is required by the regulations of the Interstate Commerce Commission?

A. Yes, sir, and more.

By Mr. Turner:

Q. Mr. Massey, is there any other service in the territory, that you know of?

A. Yes, sir, we have service from Darlington to Florence and eastern. We have daily service from Marion, Mullins, Dillon, and through that section.

Q. State whether or not your lines connect and furnish daily service between Charleston and Sumter.

A. Yes, sir, they do.

Q. State, if you will, what connections you have at your termini in Charlotte for eastern traffic.

A. We have Horton Motor Lines and several others that we interchange with at Charlotte for the East, and West, too.

Q. You handle that traffic down through Camden?

A. Some of it, yes, sir, down through Camden to that territory.

Q. State whether or not you go into the town of Cheraw.

A. Yes, sir, we do.

Q. State whether you render service from that point and that vicinity into this territory.

A. We do.

Q. Are your lines confined to the Peedee section of the [fol. 712] State, or do they cover other sections?

A. They cover both the Peedee and other sections.

Q. Do you make any connections into the State of Georgia?

A. Yes, sir.

Q. At what point?

A. Augusta.

Q. State whether or not, through that connection and through your Columbia terminal, you make connections with all movements from the South into this territory which is proposed to be served.

A. Yes, sir, we do.

Q. State whether or not you keep pretty well in touch with the territory over which you operate.

A. Yes, I do.

Q. Have you, or not, heard of any public demand for any greater service in the territory sought to be served by these applications?

A. No, sir, I have not.

Q. Is there, in your opinion, any need or public necessity for this additional service?

A. In my opinion the territory is being adequately served at this time.

Q. State, of your own knowledge, whether there are any other truck companies or truck service serving or being rendered in this particular territory.

[fol. 713] A. Yes, sir, there are two that I know of in Hartsville—Jordan Truck Lines and Mr. Chapman, I believe it is.

Q. State whether or not, through notices or other authenticated information that comes to you, these other truck lines have, or if they claim, rights under the grandfather clause.

A. They have, yes, sir.

Q. State whether they are, in your knowledge, actually and actively operating in the territory now.

A. Yes, sir.

Q. I ask you if at least one or more of such carriers as you have mentioned is not engaged as what has been referred to as an irregular common carrier.

A. Yes, sir.

Q. Under those classifications I ask you if those carriers presently are not operating for anyone who offers traffic over any route within the specified territory?

A. I am satisfied they are.

Mr. Turner: The witness is with you.

Cross-examination.

By Mr. Abeles:

Q. Mr. Massey, I think you stated that the southern terminus of your operations is North, did you not?

A. It is really Charleston.

Q. So far as the territory served by the rail line is con- [fol. 714] cerned, you do not operate south of North, do you?

A. No, sir, we go into Orangeburg from there.

Q. You operate from North to Columbia?

A. Yes, sir.

Q. And from Columbia to Sumter over Highway 76?

A. Yes, sir.

Q. And from Sumter to what other points in this McBee-Sumter territory?

A. We operate from Sumter to Bishopville, Hartsville, and Cheraw.

Q. Under your certificate from the State Commission and your application for a certificate from the Interstate Commerce Commission, do you serve all towns on those routes?

A. Yes, for which we have freight.

Q. What I mean is, are you authorized to serve all of those intermediate towns?

A. Yes, sir, there is no restriction.

Q. Did I understand you to say that you operate in North Carolina also?

A. Yes, sir, from here to Charlotte and from here to Asheville, through Greenville.

Q. Do you make reports to the North Carolina Commission?

A. Yes, sir.

Q. Did you during the year 1935?

A. Yes, sir, I suppose we did.

[fol. 715] Q. What did you state your position with the company is?

A. Vice-president in charge of traffic and operation.

Q. You would be in position to know whether you did, or not, wouldn't you?

A. I did not personally. Mr. Weathers was in charge of the company at that time, and I can not state whether he did or not. I thought you meant about the gross receipts.

Q. From that last statement I take it that you know you are required to report your gross revenues to the North Carolina Commission for the purpose of taxation, do you not?

A. We report them monthly.

Q. And you were operating in North Carolina in 1935?

A. Yes, sir.

Q. I am handing you a copy of the report of the North Carolina Utilities Commission for the biennial period 1935-1936, on page 324 of which are listed the revenues, expenses, and net income of motor carriers operating in North Carolina for the year 1935; and I ask you whether you find your company listed in that statement.

A. No, sir, I do not find them on page 324 or 325.

Q. Can you explain why it is not listed there?

A. No, sir, I can not.

Q. You mentioned two predecessor companies (at least two; perhaps more), the Piedmont Motor Express and the [fol. 716] Piedmont Transportation Company, as predecessors whose rights I presume you acquired in January, 1935. Is that correct?

A. Yes, sir, as the Piedmont-Coastal Motor Express Corporation. They were merged into the Piedmont-Coastal Motor Express Corporation.

Q. Were those companies operating in North Carolina?

A. Were they?

Q. Yes, sir.

A. I am sure they were, yes, sir.

Q. Do you find those on that statement?

A. They were not operating in 1935.

Mr. Watkins: I want to object to this line of testimony about the report of the North Carolina Commission. They are referring here to something we do not know anything about; we do not know how it is compiled, or anything else;

and he is trying to draw the conclusion, from their absence from that list, that they are violating the law.

Mr. Abeles: It is a public document.

Mr. Watkins: Put it in evidence, then.

Mr. Abeles: I don't have to. I am asking him to read that document.

The Chairman: I think he should answer the question, Mr. Watkins.

By Mr. Abeles:

Q. I am asking you whether your company paid a tax to the State of North Carolina for the year 1935

[fol. 717] A. Yes, sir, they did.

Q. I do not think you have explained on the record what the basis of your opposition to the application here under consideration is. I should like to have you explain just why you are opposing the granting of this application.

A. Well, we are opposing it on the ground that we think the territory is now being adequately served.

Q. By motor truck?

A. Yes, sir.

Q. You have heard the testimony, I presume, of the witnesses of the applicants, have you not?

A. Yes, sir.

Q. And you understand fully the nature of and the limitations upon the service which is proposed, do you not?

A. Yes, sir.

Q. You stated on your direct testimony that you would be willing to enter into arrangements with the applicants for the transportation of their shipments to the points served by your company, did you not?

A. I did.

Q. I believe you said, provided they did not ask for too much?

A. Too many schedules a day, I said.

Q. Would you, if such arrangements could be effected, so arrange your schedule that you would meet all of the [fol. 718] trains with which the truck service would be coordinated?

A. If the business would justify it, yes, sir.

Q. I am not asking about whether the business would justify it.

A. I can answer it in that way, and that is the only way I can answer it.

Q. But you would adjust your service, for the purpose of obtaining this business, to the convenience of the railroad?

A. Not at an operating loss, no, sir.

Q. Is your company in receivership?

A. No, sir.

The Witness: Off the record.

(Short statement, outside the record.)

Mr. Abeles: On the record.

By Mr. Abeles:

Q. Mr. Massey, if you would not be willing to arrange your schedules in such a manner as would meet the convenience of the railroad and meet the train schedules, it is obvious, is it not, that the whole purpose of the railway in establishing this auxiliary service would be defeated?

A. Well, I will answer that as I did before; if the business the railway company could give us would justify the rearrangement of our schedules, we would. Otherwise we [fol. 719] would not.

Q. You would not go any further?

A. I could not go any further, because we would not want to operate at a loss.

Q. You do not operate into McBee, I think you said?

A. No, sir.

Q. Do you operate over the highway paralleling the line of railway between Columbia and Hamlet?

A. Only to Camden.

Q. And that is how far north of Columbia?

A. Thirty-two miles.

Q. Then you could not receive, if a joint arrangement could be made, any traffic moved south from Hamlet to McBee destined for the McBee-Sumter territory?

A. We could receive it at Camden only.

Q. But only if we were willing to take it to Camden and then let you back-haul it over your route?

A. Back-haul?

Q. Well, Camden is north of McBee, is it not? I am speaking now of the southbound movement.

A. We do not run beyond Camden.

Q. So that would constitute a back-haul?

A. You would have to get it to Camden for us; I don't know whether you would term that a back-haul or not.

Q. That is evident. You stated, I believe, that you operate [fol. 720] daily?

A. Yes, sir.

Q. Does that include Sunday?

A. Except Sunday. And three holidays.

Q. Three holidays?

A. July Fourth, Thanksgiving, and Christmas Day.

Q. I find it a little bit difficult to follow the description of your routes entering this territory over which we propose to operate truck service. Give me the termini of those routes, will you?

A. You mean in the Peedee section?

Q. I must confess I am not familiar with that term.

A. Well, we have an office at Sumter and Hartsville——

Q. No, I am asking you the termini of your routes.

A. From Sumter, or what?

Q. Going through Sumter.

A. Through Sumter into Bishopville, Hartsville, and Chetaw.

Q. Do you stop at Cheraw?

A. Yes, sir.

Q. That is the northern terminus of that route?

A. Of that particular route, yes, sir.

Q. What is the southern terminus of that route? Sumter?

A. Sumter, or Columbia—I don't know which. I would say Sumter, yes.

Q. You do not operate, I believe you said, from Columbia [fol. 721] to Sumter?

A. Yes, sir.

Q. Does the same truck go through from Sumter to Cheraw?

A. No, sir.

Q. So you would have to make a change?

A. Yes, sir. The Columbia truck runs through to Florence from Sumter, Mayesville, Timmonsville. There is another little station in there.

Q. Atkins?

A. Yes, sir.

Q. That particular route terminates at Florence, then?

A. From Columbia it terminates at Florence.

Q. And your other route starts at Sumter, I believe you say? I am speaking now of your Cheraw service.

(Witness does not answer.)

Q. Give us the termini of the service that starts at Sumter.

A. Well, Cheraw is one, through Bishopville and Hartsville, as I said. The other is to Florence, Marion, Darlington, Dillon, and through that section, back through Hartsville and Darlington to Florence.

Q. You do not touch Hartsville on your northbound route?

A. We touch it from the truck leaving Sumter at 7.00 a. m., which goes to Bishopville and Hartsville—gets there about nine, I think, and which delivers the freight which is [fol. 722] put off in our terminal at night from the truck from Charlotte.

Q. Do you go through Lamar?

A. I think so. Truthfully, I am not thoroughly familiar with the local stations over there.

Q. Do you serve every station served by the railroad?

A. I do not know every station that is served by the railroad.

Q. Beginning with McBee—you do not serve McBee?

A. No, sir.

Q. Hartsville?

A. Yes, sir.

Q. Lydia?

A. Yes, sir.

Q. Alcot?

A. Yes, sir.

Q. Bishopville?

A. Yes, sir.

Q. Sumter?

A. Yes, sir.

Q. Timmonsville?

A. Yes, sir.

Q. Lamar?

A. I don't know about Lamar.

Q. And Darlington?

[fol. 723] A. Yes, sir, we serve Darlington.

Mr. Abeles: I think that is all.

Redirect examination.

By Mr. Turner:

Q. If these gentlemen are serious about this connecting with you on this line between Columbia and Hamlet, we could accommodate them at Cheraw, couldn't we?

A. Yes, sir.

Q. Or at Columbia or Camden?

A. Yes, sir.

Q. Or Sumter?

A. Yes, sir.

Q. Mr. Massey, in the event that they offered you traffic that is profitable, or enough to justify the trip, can you, or not, re-arrange your schedules to take care of it?

A. Yes, sir, we will do that, or put on extra equipment to take care of their needs.

Q. I ask you whether or not you can operate at a profit this line if the railroad could operate it at a profit?

A. Yes, sir, we feel like we could.

Q. I ask you whether or not you paid all the taxes that you owe, so far as they have come to your knowledge?

A. Yes, sir.

Q. I ask you specifically if you have paid your taxes to the State of North Carolina.

A. We pay that monthly; and, of course, the tag tax is [fol. 724] cash when we get them.

Q. State whether or not you have paid your taxes for the current month—or for the past month for which they are due?

A. We paid by the tenth of this month.

Q. And this pamphlet or whatever it may be notwithstanding, have you paid your taxes?

A. Yes, we have. I didn't understand that question, and I don't know yet.

Q. I ask you to look at pages 324 and 325 and see if you see the names of Horton Motor Lines or Barnwell Brothers.

A. No, sir.

Q. Do you know that they operate in the State of North Carolina?

A. Yes, sir, I do.

Q. Do you see any strictly interstate carrier that you know of? I mean anybody that does not operate except interstate.

Mr. Abeles: I might explain, Mr. Turner, that I did not suggest or intend to suggest that he was evading taxes, at all. I directed his attention to that compilation merely in connection with his statement that he is operating in North Carolina.

By Mr. Turner:

Q. Do you operate into Charlotte every day?

[fol. 725] A. Yes, sir.

Q. And do you pay your taxes there?

A. Yes, sir.

Exam. McCaslin: Off the record.

(Short discussion, outside the record.)

Chairman Darby: On the record. Is there anything further you want to ask this witness, gentlemen?

Mr. Abeles: Just one or two questions.

Recross examination.

By Mr. Abeles:

Q. Mr. Massey, if the Receivers of the Seaboard turned over freight to you destined to points on our rail line, we would, of course, be short-hauling ourselves, would we not?

A. Yes, sir.

Q. Would you be willing to turn over to us freight transported by you to points reached both by your line and our line?

A. No, sir, I would not be willing to do that.

Q. Then you are suggesting here that we do something for you that you would not do for us?

Q. Well, if you were going to put on this particular service, I suggested that we could do it for you, and possibly cheaper than you could maintain the service yourselves, as we are covering the territory which you propose to cover.

Q. Possibly cheaper?

[fol. 726] A. Yes, sir.

Mr. Abeles: That is pure surmise.

Reredirect examination.

By Mr. Turner:

Q. If you found the traffic over any 100 or 134 miles of your route now so heavy that you could not handle it yourself, would you make an agreement with the Seaboard to handle it, or would you go and try to build a railroad.

A. I would make an agreement with the Seaboard.

Mr. Turner: Nothing else.

Chairman Darby: Any further questions by anyone? If not, the witness may be excused.

Gentlemen, I should like to ask you this one particular thing. Let's not go into these long drawn out questions that do not mean anything to the case. Let's confine the testimony to the issue.

Exam. McCaslin: Off the record.

(Remarks by the Examiner, outside the record.)

Chairman Darby: On the record.

Have you another witness, Mr. Turner?

Mr. Turner: Yes, sir. I call Mr. Jordan.

CARROLL T. JORDAN was sworn and testified as follows:

Direct examination.

By Mr. Turner:

Q. Mr. Jordan, you live in Hartsville?

[fol. 727] A. Yes, sir.

Q. How long have you lived there?

A. Thirty-three years.

Q. In what business are you engaged?

A. Well, oil, trucking, and farming.

Q. Have you held any office with any civic organization in your town in recent years?

A. Yes, sir.

Q. State what.

A. What do you mean—in connection with trucking?

Q. No, I mean in the town of Hartsville.

A. I am on the board of directors of the Rotary Club.

Q. How about the Chamber of Commerce?

A. I am just a member of it.

Q. What office, if any, do you hold in any trucking organization in the state—any organization of truckers?

A. At present I am on the board of directors of the South Carolina Truckers' Association.

Q. Have you previously held that office?

A. For the past two years.

Q. Were you, or not, operating on June 1, 1935?

Mr. Abeles: I am not going to question that.

Mr. Turner: All right.

By Mr. Turner:

Q. What are the general routes you cover as a truck operator?

[fol. 728] A. Our principal haul is between Charlotte, North Carolina, and Hartsville, South Carolina, through Monroe, Pageland, Jefferson, and McBee.

Q. Are there any other truck operators or motor trucks that serve the territory generally covered, or portions thereof, as identified, for the purpose of this record, as the Seaboard McBee-Sumter operation?

A. We have several large ones, the largest being New South; the next Parrish-Gray Lines, at Sumter. R. D. Fowler Motor Express. Lewis & Holmes. McDougald Transfer Company. Privette & Mozingo. Kelley Transfer. And to my own knowledge there are some fifteen or twenty more that operate in this immediate territory around Hartsville.

Q. Are all of these people, to your best information and belief, entitled to grandfather rights under the Motor Carrier Act?

A. The ones I have named, yes.

Q. State whether or not there has come to your attention any evidence of a public convenience and necessity for any additional service by motor truck in the territory covered by the McBee-Sumter application.

A. Not to my knowledge.

Q. I ask you if you are not located in the very heart, or center, of this particular territory.

A. I think I am.

[fol. 729] Q. Do you keep up with the transportation situation in that vicinity?

A. I do my best.

Q. If there were any need for additional service would you, or not, have normally heard of it?

A. I think I would.

Q. Has the Seaboard Air Line Railway made any effort to exchange freight with you for this McBee-Sumter territory?

A. They have not. At one time, two or three years ago, I approached Mr. Whaley, their agent at Hartsville, on the subject of handling shipments out of Hartsville to McBee, in order that they might catch their through trains going north.

Q. Are you in position to handle additional freight, if it were offered to you?

A. Yes, sir.

Q. In your opinion as an experienced truck operator, is there any need of or any public convenience or necessity for the proposed line?

A. I do not think so.

Q. State whether or not you serve the East by interchange.

A. I do. Barnwell Brothers and Aikers & Hudson are the two Eastern routes.

Mr. Turner: The witness is with you.

[fol. 730] Cross-examination.

By Mr. Abeles:

Q. What is the name of your company?

A. I operate as Jordan's.

Q. Are you certificated by the State?

A. I hold Class F.

Q. Are you a common carrier?

A. I do not operate as a common carrier within the State.

Exam. McCaslin: I want to clear that up. You mean within the State or within the terms of the South Carolina State law?

A. Within the terms of the South Carolina State law.

Exam. McCaslin: Off the record.

(The Examiner made a statement, outside the record.)

By Mr. Abeles:

Q. Have you applied to the Interstate Commerce Commission for a certificate?

A. Yes, sir.

Q. As a common carrier?

A. Yes, sir.

Q. Do you carry all classes of traffic?

A. Yes, sir.

Q. Unlimited in your classification?

A. Yes, sir.

Q. You operate only to Hartsville, do you not?

A. Yes, sir, out of Hartsville.

Q. Have you any regular schedule?

[fol. 731] A. We operate principally between Hartsville and Charlotte, yes, sir.

Q. On regular schedule?

A. Well, we have, as a rule we have from ten to twelve trucks a week between those points.

Q. You do not go beyond Hartsville in the Sumter area?

A. Yes, sir, we operate out of Hartsville all over South Carolina.

Q. You said you operate out of Hartsville to Charlotte.

A. That is our main traffic, yes, sir. But we haul out of Charleston, South Carolina, nearly daily for one concern.

Q. Do you operate to Darlington?

A. We run trucks all over that territory—Florence, Darlington, Timmonsville, Lamar, Sumter—nearly the entire territory.

Chairman Darby: Off the record.

(Statement by the Chairman, outside the record.)

The Chairman: On the record.

By Mr. Abeles:

Q. In your application to the Interstate Commerce Commission, did you designate any fixed routes and termini?

A. We designated between Hartsville and Charlotte. For your information, above Charlotte there are hundreds——

Q. I am not interested in the territory above Charlotte [fol. 732] but only in this territory with which we are

immediately concerned. Then you have asked the Interstate Commerce Commission for no authority to operate into any point south of Hartsville—is that correct?

A. No, sir, we asked them for the right to operate all over South Carolina.

Q. With undesignated routes and termini?

A. You misunderstand me.

Q. Let me ask you this, to put it specifically. Did you ask the Interstate Commerce Commission for authority to operate to Timmonsville?

A. As a common carrier, yes.

Q. I understood you to say you asked for the specific route from Hartsville to Charlotte?

A. We did.

Q. And any other routes?

A. Yes, sir.

Q. What other routes?

A. We did not specify.

Q. Oh, you are asking the Interstate Commerce Commission, then, for a roving certificate corresponding to your State certificate—is that it?

A. That is right. We have made two applications and have two docket numbers.

Chairman Darby: Off the record.

[fol. 733] (Statement by the Chairman, outside the record.)

The Chairman: Proceed, gentlemen. Any further questions?

Exam. McCaslin: Mr. Jordan, you say you have two applications?

The Witness: Yes, sir.

Exam. McCaslin: One was for a regularly scheduled common-carrier operation between Charlotte and Hartsville?

The Witness: Yes, sir.

Exam. McCaslin: And the other for an irregular contract-carrier operation to all points in South Carolina?

The Witness: And North Carolina and southern Virginia and northern Georgia.

Mr. Abeles: But as to your routes, other than the Charlotte-Hartsville service you undertook in your application to the Commission to provide no regular service?

The Witness: No, sir.

Mr. Turner: If anybody offers you any interstate traffic from anywhere going into the territory covered by the McBee-Sumter application, would you haul it?

The Witness: I would grab it fast.

By Mr. Abeles:

Q. Would you do this for us, Mr. Jordan—you know the routes and schedules proposed here, do you not?

A. Yes, sir.

[fol. 734] Q. Would you agree to establish those routes and those services, regardless of the volume of traffic which we might offer you?

A. For Darlington and my immediate territory.

Q. I am speaking now of all the points to be served by our proposed truck service.

A. For your Hartsville proposition, yes.

Q. That is not answering my question. For all the points which we propose to serve by our trucks?

A. I would not care anything about your stuff in North Carolina.

Q. Speaking of this McBee-Sumter territory?

A. I would like to have it.

Q. Would you be willing to establish routes and schedules regardless of the amount of traffic and without any guaranty of the amount of traffic?

A. I think I would be willing to, yes, sir.

Mr. Turner: I think the fair question there would be, if they offered all they had there.

Mr. Abeles: I think that is a fair question. Into every one of the towns which we propose to serve?

A. I don't know whether I understand. If it is Sumter, Hartsville, Darlington, and Timmonsville, yes, I would like to have that.

By Mr. Abeles:

Q. You understand, of course, that we are not proposing [fol. 735] to haul anything to Hartsville by truck, do you not? Nothing to the mills at Hartsville by truck.

A. Well, that would be O. K.

Q. And that we are not proposing to haul by truck any carload shipments moving by rail?

A. Would you accept carload shipments if I were to offer them to you?

Mr. Abeles: I am not on the witness stand.

By Mr. Abeles:

Q. You understand that, do you?

A. I would play ball with you if you will play ball with me.

Q. That is the best you can answer?

A. Yes, sir.

Mr. Abeles: That is all.

Mr. Turner Is there anything else you want to say?

The Witness: No, sir.

Chairman Darby: The witness is excused.

D. C. SMITH was sworn and testified as follows:

Direct examination.

Mr. Turner: I want to put this on the record, Mr. Commissioner. I am offering this witness as a witness for the New South Express Lines and do it with the full knowledge that we shall be bound by his testimony. I have not [fol. 736] conferred with him, but he wishes to offer his testimony, and I put it in the record without knowing in advance what he will say and with the knowledge that I shall be bound by his testimony.

The Chairman: Yes, sir.

By Mr. Turner:

Q. Mr. Smith, you work for whom?

A. Nillson Motor Express.

Q. Where is their home office?

A. Walterboro, South Carolina.

Q. What position do you hold with them?

A. Soliciting agent.

Q. Tell us where you operate in this territory which is covered by the application.

A. We have a line from Walterboro to Columbia which hits the Gaston-Garnett proposal.

Q. State where you come in, with regard to their proposal.

A. Denmark, and from Denmark into Columbia. Then we also hit it at Fairfax again, with our Walterboro-Augusta operation and interchange with Fleming Truck Line at Savannah for points between Savannah and Fairfax on the Seaboard.

Q. Do you know of any carrier who operates in that immediate vicinity?

A. New South operates from Columbia to North, in that vicinity; and Lowe Transfer Company, of Aiken, operates Olar, Ulmer, Sycamore, and Fairfax.

[fol. 737] Q. From your general knowledge of the traffic situation along the proposed route, is there any need for additional service?

A. I would not think so, no, sir.

Q. Do you know, or not?

A. Being soliciting agent for the company, I think I have some idea of the amount of traffic into that territory, and with the companies now operating I do not think there is enough business to warrant any additional truck service.

Q. State whether or not there is a public need and necessity for additional service in that territory.

A. I do not think there is any need for any additional service other than can be covered by the four companies mentioned.

Mr. Turner: The witness is with you.

Cross-examination.

By Mr. Abeles:

Q. Where, did you say, your company is operating, Mr. Smith?

A. You mean the full operation?

Q. No, just where it affects this territory.

A. From Walterboro to Columbia.

Q. You do not serve any of the territory south of Denmark, between Denmark and Garnett?

A. Yes, we serve Fairfax.

Q. But nothing from Fairfax south?

[fol. 738] A. Except through connections with Fleming Truck Line out of Savannah. They have daily service, and we interchange with them in Savannah.

Q. Have you heard the testimony of the witnesses of the applicants in connection with the Gaston-Garnett service?

A. Yes, sir.

Q. If the railway confines the service to be performed by its proposed truck service to the transportation of traffic carried by rail, will that in any way hurt your business?

A. That is problematical. The purpose, as I see it, of your proposal is to increase your revenue, and you have to take it away from somebody if you do. So, naturally, we presume if you give truck service in that territory you would take business away from the certificated carriers who now operate.

Q. If we carried only traffic that was offered to the railroad for transportation by rail?

A. If you would not accept any additional business to the business you are now handling, then we would have no objection whatsoever.

Q. You do not happen to know that we could not lawfully do that, do you?

A. I do know it, and that is why I am against the whole proposal.

Q. What kind of certificate has your company?

[fol. 739] A. What is known as a D Certificate in South Carolina.

Q. Have you a certificate from the Interstate Commerce Commission?

A. As to that I can not answer, because Mr. Nillson handled that. I know the proper applications were made.

Q. You do not know what you have done as to getting authority to carry interstate traffic?

A. I know the proper applications were made, but I do not know what disposition was made of these applications.

Q. Can you tell me how much traffic your company carries that originates in territory served by the Seaboard rails and destined to the points proposed to be served by our proposed truck service?

A. Do you mean all of the Seaboard operations or just the operation covered by this proposal?

Q. Only the latter.

A. It would be impossible for me to do anything except guess at that tonnage.

Q. Then you could only guess as to whether or not this proposed service would hurt you?

A. It would certainly be a matter of opinion.

Q. Unless you know how much traffic you carry that might be affected by this proposed operation you could not do anything but guess as to its effect upon you? That is obvious.

[fol. 740] A. I know this, that by your starting the truck service in there you would not increase the potential tonnage that moves into that territory now.

Q. But we might save what is there?

A. I realize that, but, I am making this point—if you increase your service and increase your volume you will have to take it from somebody who is already getting it.

Mr. Abeles: That is all.

Mr. Turner: That is all I have to offer.

Mr. Watkins: On behalf of those whom I represent, and in view of the rulings that have been made by the Joint Board, we do not desire to enter any testimony at this time. However, I want to renew the motion that this hearing be not closed but remain open for the purpose of allowing the Commission to consolidate this and the other hearings referred to in my motion this morning, and I move that the motion to consolidate be granted.

Chairman Darby: Mr. Watkins, I deny that motion on the grounds that I stated this morning—that if the Interstate Commerce Commission sees fit to consolidate these hearings it can do so, but I do not think this Board has any authority to consolidate them after the instructions it has received from the Interstate Commerce Commission.

Mr. Watkins: I should like to have an exception noted [fols. 741-742] to that.

The Chairman: Yes, sir. Do you desire to file briefs?

Mr. Watkins: It will probably be necessary for me to file a brief on my motion which has been made, and to that extent I reserve the right.

The Chairman: Mr. Abeles?

Mr. Abeles: We reserve the right, also.

The Chairman: Briefs, subject to such different order as the Commission may make, will be due in these cases on July 12, 1937.

Is there anything else?

The hearing is closed.

(Whereupon the hearing was adjourned, at 6:40 o'clock p. m., Saturday, June 12, 1937.)

[fol. 743] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket MC 86,687. Sub. No. 7

In the matter of the application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers), a corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a certificate of public convenience and necessity, Form BMC 8, Sub. No. 7, authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Virginia and North Carolina between Richmond, Va., and Henderson, N. C.

N. C. Utilities Commission Rooms, Raleigh, N. C., June 14, 1937, 9 a. m.

Before: Joint Board No. 7, composed of: Hon. Stanley Winborne, Raleigh, N. C., and Hon. H. Lester Hooker, Richmond, Va.

Present: Hon. Stanley Winborne, Raleigh, N. C., acting as Chairman.

Also present: W. W. McCaslin, Examiner, Bureau of Motor Carriers, Charlotte, N. C.

APPEARANCES:

Chas. T. Abeles, and Murray Allen, Seaboard Air Line Railway Building, Norfolk, Va., *North Carolina*, appearing for applicants.

Edgar Watkins, Jr., Bona Allen Building, Atlanta, Ga., appearing for Southern Motor Carriers Rate Conference.

[fols. 744-745] Proceedings

The Chairman: The Interstate Commerce Commission has set for hearing at this time and place Docket No. MC 86687, Sub. No. 7, application of Seaboard Air Line Railway for a certificate of public convenience and necessity authorizing extension of operations as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce in the States of Virginia and North Carolina between Richmond, Virginia and Henderson, North Carolina.

Mr. Commissioner Hooker is not present. He cannot be here.

(Discussion off the record.)

The Examiner: I should announce at this time that no free copies of the transcript will be distributed. It is necessary to order from the reporter a copy of the transcript is you desire it.

I should also announce that no persons will be allowed to appear formally to examine witnesses and participate in the hearing as counsel unless they have applied for admission to practice before the Commission, if they have ever before appeared before the Commission. Also, persons representing themselves may appear when they have an interest in the case, and members of a partnership may appear representing the partnership of which they are members; so may bona fide officers of a corporation who have an interest in the case. It is also necessary that formal intervention be made in all cases now by the [fol. 746] parties who wish to appear and participate.

The Chairman: Who appears for the applicant in this case?

Mr. Abeles: Charles T. Abeles, of Norfolk, Virginia, and Murray Allen, of Raleigh, North Carolina.

The Examiner: You gentlemen are either admitted to practice before the Commission or have a position with the corporation you represent which is that of a bona fide employee or officer?

Mr. Abeles: Both of us are admitted to practice.

The Examiner: Are there any interveners?

Mr. Watkins: Edgar Watkins, Jr., Bona Allen Building, Atlanta, Georgia, representing the Southern Motor Carriers Rate Conference. I have not yet filed formal petition of intervention. I desire opportunity to file that.

The Examiner: You may state your position on the record, with the grounds for intervention. You may file the formal petition for leave to intervene within ten days, with the Commission, serving the proper number of copies on the parties of record.

Mr. Watkins: The Southern Motor Carriers Rate Conference is an organization composed of more than 400 motor carriers operating in the territory which applicant

desires the right to operate in under the eight applications which they have pending before the Commission.

[fol. 747] Mr. Abeles: This proceeding involves an application for a certificate to operate truck service between Richmond Virginia and Henderson, North Carolina. As such, the only questions presented for consideration by this Board are those found in the issue of public convenience and necessity requiring that service, and I want to object now to all reference by counsel for protestants or any other party to any proceeding covering other services, any applications now pending before the Interstate Commerce Commission.

The Chairman: You mean you object to any testimony as to any services now provided between Richmond and Henderson?

Mr. Abeles: Oh, no, your Honor, in the statement just made by counsel for protestants, he mentioned eight applications filed by the applicants and pending before the Interstate Commerce Commission. My position is that he should not refer to those covering territory other than the Richmond-Henderson territory.

The Chairman: That would be incompetent in this hearing. We are ready for the petitioner to proceed.

Mr. Watkins: I didn't finish the statement of our position.

Mr. Abeles: Have you a ruling on that?

The Chairman: We are excluding that for the time being. We don't know what the evidence will bring forth as to [fol. 748] connecting carriers. It may have some pertinency from that standpoint.

Mr. Watkins: It was necessary for me to refer to the other applications in order for me to have my position clearly stated in the record.

The Chairman: Understand you can state your position. We will rule on the testimony, if you offer it, later.

Mr. Watkins: And all of these applications which I referred to are sub-numbered under one application number, namely, MC 86687. The applications when taken as a whole create a motor carrier operation extending from approximately Richmond, Virginia, to the Georgia-South Carolina line, north and south, and east and west, from approximately Wilmington, North Carolina, in connection with their present operations, through to Rutherfordton, North Carolina. And we are opposing the granting of any such applications or any part of these applications on

the grounds that there is no convenience and necessity for such and that the service in the territory is adequate.

The Examiner: Are there any other interveners or protestants? (No response.)

The Chairman: Mr. Commissioner Hooker, of Virginia, who is the other member of this Joint Board, is unable to be present today. The Commission is very desirous of having these cases proceeded with as promptly as pos- [fol. 749] sible, in all cases. We should like to inquire if it would be possible for the parties to stipulate that subject to such objections as they have generally to the proceedings, the Joint Board may proceed, in the absence of Mr. Hooker, upon the condition that the record will be submitted to him for inspection before he participates in the recommended report and order which may be issued by the Board.

Mr. Abeles: Mr. Chairman, though we regret his absence, that procedure is agreeable to the applicants.

Mr. Watkins: We will agree, also.

Before you call your witness, Mr. Abeles, I have a motion I would like to make. In the hearings on applications heard on June 11 and 12, evidence was introduced by applicant which indicated a desire and purpose on their part to maintain continuous motor transportation between points in three states, the States of Virginia, North Carolina, and South Carolina. We made a motion in those cases and have transmitted a telegraphic motion and a formal motion to the Commission setting out that these hearings as set before Joint Boards are illegal. And now on the same basis we ask that this hearing be postponed until such time as the Commission has opportunity of passing upon our motion to cancel all of these eight hearings and consolidate the same for hearing. I might also say that if section 205-B of the Motor Carrier Act is construed as affecting Joint rail and trucking operations, [fol. 750] these series of applications should be set for hearing before an Examiner, as operations in more than three states are involved. The formal petition has been sent to the Commission, and I have a copy here for the Joint Board.

Mr. Abeles: Might I be heard on that very briefly?

The Chairman: Yes, sir.

Mr. Abeles: It is my understanding from the proceedings which have preceded this, that it is the intention of coun-

sel for the intervening protestants to file a brief upon the issues raised by his motion. Is that correct, Mr. Watkins?

Mr. Watkins: That is correct, unless I get it acted on before.

Mr. Abeles: In view of the opportunity which will be afforded through that brief to present to the Board and the Commission the applicant's views upon the questions raised by the motion, I shall not at this time delay the proceedings by arguing the motion at length here. I might say very briefly that it seems entirely clear to us under the language of section 205-B, of the Motor Carrier Act of 1935, that Congress did not intend to require the Commission when presented with an application, in defining specific physical limitations to inquire into whether or not the granting of a certificate over the routes specified in the application might make it possible for the applicant either through existing motor truck services or [fol. 751] existing rail carrier services, to perform continuous transportation over routes other than that specified in the application, either wholly by motor carrier or partly by motor carrier, partly by rail. If that had been the intent of Congress, it would have been virtually impossible for the Commission in setting cases of this character for hearing, to determine whether in conformity with the requirements of the Federal Motor Carrier Act it should submit the hearing before a Joint Board composed of one or two or three members, or before an Examiner, because it would have had to have taken into consideration potential services, the nature of which is not disclosed by the application and which it would have been impossible for the Interstate Commerce Commission to determine. That problem is impossible of practical solution in advance of the hearing. If allowed by the Commission in the manner insisted upon by counsel for the intervening protestants, it would have injected into the proceedings under the Federal Motor Carrier Act such inextricable confusion which would make it impossible to proceed under the Act.

Mr. Watkins: Mr. Commissioner, may I point out that Docket MC 86687, subs. 1, 2, 3, 4, 5, 6, and 7, are all headed "extension of present operations". So I assume that the applicant, himself, expects that by the use of these seven applications to extend his present motor car- [fol. 752] rier operations between Monroe and Hamlet,

which he holds, I understand, by virtue of grandfather rights. So it seems to me that in order for the Commission to get a complete and accurate picture of the service which could be performed by applicant under these applications, that it is necessary to have evidence concerning the entire operation, and there is a certain amount of evidence that would have to go into each of these cases that is a duplication; and having these eight separate hearings is going to cause great additional expense to the Commission and the parties involved, and is going to cause the application as a whole to be passed on by four different Joint Boards, without any coordinated evidence as to the effect of the whole.

Mr. Abeles: Mr. Chairman, all I have to say in reply is to repeat what I stated at the outset, that in view of the opportunity that we shall have to argue this matter fully on briefs before the Commission, I shall not consume the Board's time by further argument.

The Chairman: We would like to agree with you, Mr. Watkins, and it probably would have been a better arrangement if all of these cases had been consolidated; but the fact is that they have not been by the Interstate Commerce Commission there is only one case that we have before us today. That is the application of the Seaboard [fol. 753] for a certificate of convenience, and necessity from Richmond to Henderson. So far as this Board knows from this application, without going into extraneous matter which cannot be brought before it as evidence in this case, certainly on a motion, we might grant or refuse to grant this application, and it would not affect the other applications one bit. There is no suggestion before this Board that if this application is denied, that they will not continue in their effort to get applications that you referred to over other routes. On the other hand, it is perfectly conceivable that if all the others are denied and this application is granted, that they will operate. If there was any suggestion from the petitioner that unless they received applications over all the routes, they wouldn't want any, why then we would have another view of your motion; but as I understand it, there is no suggestion or intimation of that sort coming from the petitioner in this case and the Board overrules your motion.

Mr. Watkins: May we have an exception noted?

The Chairman: Yes, sir. Note the exception by the protestants.

Mr. Abeles: Apropos to the Chairman's last statement, I might assure the Board that every one of the applications referred to by counsel for the intervening protestants is a separate and independent proposal and that we will desire the granting of each application regardless of [fol. 754] the action taken by the commission on any of the others. I think the evidence will bring that out very clearly.

The Chairman: All right, gentlemen. Proceed.

Mr. Abele: I will call the first witness, Mr. Terrell.

H. M. Terrell was sworn and testified as follows:

Direct examination.

By Mr. Abele:

Q. Mr. Terrell, state your name, residence, and occupation.

A. H. M. Terrell, Raleigh, North Carolina, Superintendent for the Virginia Division of the Seaboard Air Line.

Q. What comprises the Virginia Division?

A. The territory from Raleigh to Richmond, and Portsmouth, with the Branch lines between these points.

Q. Mr. Terrell, you are familiar, are you not, with the proposal of the receivers of the Seaboard Air Line to establish the truck service for which they have applied in this proceeding?

A. Yes, sir.

Q. Will you describe that truck service, stating first its termini?

A. The proposed truck service is to operate between Richmond, Virginia, and Henderson, North Carolina, terminating at these points.

Q. That is a movement in both directions, is it?

[fol. 755] A. Yes, sir.

Q. Will you state now the purpose of the receivers in seeking the authority to establish this service?

A. The purpose is to advance the delivery of less than carload freight at intermediate points between Richmond and Henderson.

Q. Now, will you state how that is to be accomplished?

A. By having a truck to leave Richmond——

Q. Let me interrupt you there, Mr. Terrell. Will you first state what train service, local train service, is now performed between Richmond and Henderson by the receivers?

A. There will be two divisions of that. One local service between Richmond and Norlina, this train leaves Richmond at 6:25 a. m.; arrives at Norlina at approximately 4:15 p. m. Between Norlina and Henderson there is another train which leaves Norlina at 11:15 a. m., arrives at Henderson approximately 2:00 p. m.

Q. On the reverse direction, is there any train service?

A. There is no local service in the reverse direction.

Q. There is no local service performed between Henderson and Richmond?

A. Not handling less carload freight.

Q. That is what I mean. Now, what will your proposed truck schedule be?

A. One truck will leave Richmond at 12:00 a. m., arrive [fol. 756] in Henderson at 8:00 a. m. Northbound trucks will leave Henderson at 7:00 a. m., arrive at Richmond at 4:00 p. m.

Q. Will those two services be covered by different trucks?

A. Yes, sir.

Q. And different crews?

A. Yes, sir.

Q. Now, with those schedules before us will you describe how the purposes the receivers have in mind in seeking the authority for the establishment of this truck service will be accomplished?

A. Well, the truck that leaves Richmond at 12:00 a. m. will have all the freight for intermediate points between Richmond and Henderson. It will not have the Henderson proper freight. This truck will also load at Petersburg the freight for these intermediate points excluding Henderson and unload this freight at the stations as it passes the stations.

Q. You mean the destination stations?

A. The destination stations; and the northbound truck will handle the freight from Henderson which will include the freight from Raleigh and points south, and from Portsmouth and the connections into Portsmouth which will move into Henderson during the night.

Q. By train?

A. By train.

Q. This freight will then be handled by this truck leav-
[fol. 757] ing Henderson at 7:00 a. m., with distribution?

A. Correct.

Q. Handled by this truck to be unloaded into the stations between Henderson and Richmond for which it is destined?

A. That's right.

Q. Now, your southbound truck leaving Richmond at approximately midnight, I believe you said, would reach Henderson and all intermediate destinations early in the morning?

A. Yes, sir.

Q. Your northbound truck leaving Henderson at 7:00 a. m. will arrive in Richmond and all intermediate destinations not later than 4:00 p. m.?

A. That is correct.

Q. Now, will you give us a specific example of how the performance of our deliveries of less than carload freight will be improved by the utilization of the proposed truck services?

A. From station to station?

Q. Yes, sir.

A. At the present time a shipment, we will say, from Henderson to McKinney, will reach McKinney—I will make that plainer. Shipments placed in the warehouse in Henderson today, for transportation to McKinney under the present schedule will reach McKinney at approximately 11:30 a. m.

Q. By train?

A. By train.

Q. You mean 11:30 a. m. when?

[fol. 758] A. The next day at 11:30 a. m. Under the proposed plan this shipment will reach McKinney at approximately 1:30 p. m. the next day. It would be some delay with shipments of that kind; but a shipment, we will say, moving from Richmond to McKinney, which under the present play, reaches there at 11:30.

The Chairman: What time does it leave Richmond?

The Witness: 6:25 a. m.

By Mr. Abele:

Q. Just a moment I think we are going too fast. Just assume a shipment delivered at our station at Richmond in the middle of the day, will you follow the course of that shipment under our present service?

A. Our present service has to leave Richmond at 6:25 a. m., the following morning.

Q. Tomorrow morning?

A. Yes. And reach McKinney at 11:30 a. m. tomorrow. Under the proposed plan this shipment would leave Richmond at 2:45 a. m. tomorrow, making it ready for delivery, any time after 8:00 a. m. tomorrow.

Q. Now, are there other improvements in service which will result from this proposed truck service?

A. Yes, sir.

(Discussion off record).

A. Under our present plan of handling freight, a shipment loaded at Portsmouth any time today, will be loaded [fol. 759] and forwarded to Henderson tonight.

Q. By train?

A. By train, yes. And would be transferred from one car to another tomorrow, and would not be delivered at McKinney until 11:30 a. m. day after tomorrow. Under the proposed plan, shipments loaded at Portsmouth today would move to Henderson that night by train to be transferred to the truck and delivered to all points between Henderson and Richmond the next day from 7:15 a. m. between 7:15 a. m. and 4:00 p. m.

Q. Making a saving of how much in delivery time?

A. At least 24 hours, and in some few cases 36 hours.

Q. Now, let us take the shipments moving from Richmond to points between Norlina and Henderson, give us an example of the effect of the proposed truck service upon such movements?

A. Shipments placed in warehouses today at Richmond under the present plan would move to Henderson that night and would not be delivered to these points.

Q. What points?

A. The points between Norlina and Henderson, unless we had delivery between 11:15 and 2:00 p. m.

Q. That is what delivery, second morning or third morning?

A. Third morning.

Q. Now, what are the plans as to such shipments under the proposed service?

[fol. 760] A. The proposed service is that the shipments placed in warehouses today would be delivered at all stations between Norlina and Henderson, prior to 8:00 p. m. the next day.

Q. That would be a saving of how much?

A. A saving of approximately 36 hours.

Q. What effect will the proposed service have upon the movement of your local freight trains, if any?

A. They will be advanced some, not a great deal on account of not having to stop and load and unload less carload freight at the intermediate points.

Q. How many local stops will be eliminated in that way?

A. Approximately 10 per day.

Q. In one direction?

A. Yes, sir.

Q. You have a local freight service only in one direction. I understand that is southbound?

A. Yes.

Q. From Richmond what will be the effect of the proposed service on traffic from Petersburg consigned to points beyond Richmond, north of Richmond?

A. That would make no change in freight points north of Richmond.

Q. Can you give us an example of such traffic loaded at Richmond today consigned for points beyond Richmond, north of Richmond?

[fol. 761] A. You say Richmond, you mean Petersburg? The freight loaded at Petersburg today, for points north of Richmond, moves into Richmond by train that night, and the cars, if they go to our warehouse at that point, are worked the next day and are delivered to connections by 4:00 p. m. for forwarding on their trains that night.

Q. The proposed truck service will not advance that movement in any respect?

A. No, sir.

Q. Now, Mr. Terrell, has this proposed service been scheduled in such a way as to or with a design to connect with or integrate with any other service now established or to be established, by truck, or is this a separate and independent operation?

A. This is a separate and independent operation.

Q. And its purpose is to serve the territory, the local territory intermediate between the termini of the proposed truck service only?

A. That is the only thing that it is proposed to establish it for.

Q. Mr. Terrell, at Richmond, do we receive freight from North Carolina connections?

A. To some extent, yes, sir.

Q. I'm speaking now of less than car load freight which would be carried by these trucks?

[fol. 762] A. Yes, sir.

Q. And incidentally will we carry any car load freight on these trucks at all?

A. No, sir. Less car load freight.

Q. You have, I believe, movements from Richmond south, the service with respect to which will be improved by the proposed truck service. Will that apply not only to traffic delivered to the Seaboard at Richmond but also that received from North Carolina connections?

A. Yes, sir. Any freight that moves through the stations at Richmond or Petersburg for the intermediate stations will be improved.

Q. Mr. Terrell, I believe you stated that the movement of the northbound less than carload movements, shipments would not be substantially improved by the proposed truck service, is that correct?

A. Well, our reply was freight north of Richmond would not be substantially improved. Those for Petersburg or Richmond would be improved by 24 hours, that is shipments from these local stations.

Q. Mr. Terrell, you stated, I believe, that you had no local northbound train service?

A. Yes.

Q. Can you tell us how less than carload shipments moving from some intermediate points on this route, for example Greystone, just north of Henderson, would be [fol. 763] moved under the present service to Petersburg or some other intermediate point north of Greystone?

A. Well, let's take perhaps a smaller station, well McKenney. A shipment from Greystone which was placed in the warehouse there prior to 1:30 p. m. would be loaded in a car moved to Henderson, transferred to a car which would be billed at Petersburg, leave Henderson, by 9:00

p. m., move to Petersburg, arriving there about 4:00 a. m., and leave Petersburg at 8:30 the next morning, by this local, be unloaded at McKinney at approximately 11:30 the next day.

Q. That would involve then a back haul to Henderson from Middleburg?

A. From Greystone.

Q. From Greystone then, a North Carolina movement to Petersburg, and a second back haul to McKinney?

A. That's correct.

Q. And two interchanges?

A. Yes.

Q. Two transfers, is it?

A. One transfer. It would not be transferred at Petersburg.

Q. It would be hauled in the same car?

A. Yes.

Q. One transfer at Henderson?

A. Yes.

Q. Now, how would it move by the proposed truck service?

[fol. 764] A. By the proposed truck service shipment will be picked up at Greystone by the truck and 7:15 a. m., the next day; move into McKinney, reaching there at 1:30 p. m., the second day after it is placed in the warehouse.

Q. Second?

A. Yes, the second morning delivery.

Q. In establishing this truck service, Mr. Terrell, will there be any stations immediately between the termini, Richmond and Henderson, which will be used for the purpose of receiving and delivering freight to be carried by the truck from the trains. In other words, are there any so called lay off stations which we propose to use in connection with the proposed truck service?

A. No, sir.

Q. There would be no lay off service?

A. No, sir.

The Chairman: Mr. Terrell, let me ask you this question. You are contending now that less carload shipments moving from Greystone to McKinney that it would go to Henderson and then come back to Petersburg and then it would be sent from Petersburg back to McKinney?

The Witness: Yes.

By Mr. Abele:

Q. Having two double hauls a day, each end?

A. Yes.

Q. You don't have any such movements as that though, do you?

[fol. 765] A. We have a few, Mr. Winborne. We do have. Every now and then there will be a shipment from one of these small stations to one of these small stations.

Q. That is a very rare thing though, isn't it?

A. No, sir. It isn't rare. I would say we have an average of two shipments a day, small shipments.

Q. Two a day?

A. Yes, sir.

Q. You don't have much less car load business between Richmond and Henderson any way at intermediate points, do you?

A. Yes, sir. Two or three of the stations are heavy. The others are very light.

Q. Which are the heavy ones?

A. Well, McKinney has fairly heavy, Dinwiddie, Alberta and LaCrosse, those four have some.

Q. How about Norlina?

A. Norlina is fairly heavy.

The Chairman: You say you have only one less car load train coming from Richmond to Henderson a day?

The Witness: Yes, sir.

The Chairman: None going from Henderson to Richmond?

The Witness: Yes. McKinney. We load at Henderson, everything for points from Petersburg to Norlina, moves up in a through train that night and connects with this local coming back the next day, makes just the same time [fol. 766] as if we did have double daily service.

By Mr. Abele:

Q. That is all. I mean as far as movements north from Henderson to points between Henderson and Norlina, a back haul the following day from Norlina?

A. Yes, sir, from Petersburg.

Q. From Petersburg?

A. Yes, sir.

Q. Mr. Terrell, have any carload movements been carried by these trucks?

A. No, sir.

Q. They will continue, I understand, to move entirely by rail?

A. That is correct.

Q. And the proposed truck service then will be utilized exclusively for less carload shipments?

A. That's correct.

Q. Is it your purpose to continue to use rail service for all shipments except those on which the deliveries can be improved by the proposed truck service?

A. Yes, sir.

Q. And I understand you to say that the sole purpose you have in mind in establishing this truck service is to coordinate with our existing rail service?

A. That is correct.

Q. Will you state what in your opinion will be the effect [fol. 767] of this proposed service in its competition with existing independent Motor Carriers on any route?

A. I don't know that I can answer that, Mr. Abeles. This is just to advance the movement of the freight that we are now handling. I don't think it will have any effect on the other business being sent by truck.

Q. Is it our purpose or in your opinion will the result from this proposed service be that we will invade the field now occupied by Independent Motor Carriers?

A. No, sir. That was not the purpose in establishing this service.

Q. Do you see any reasonable possibility of such a result?

A. No, sir. I don't.

Q. We propose merely to handle through these trucks, traffic now moving by rail, do we not?

A. Yes, sir.

Q. Do you propose to serve any points or territory other than the stations now served by rail?

A. No, sir.

Q. Which will not depart from our rail route in any respect?

A. No, sir.

Q. Does the highway which we propose to use closely parallel the rail lines?

A. Yes, sir.

Q. Throughout the entire route?

[fol. 768] A. Yes, sir.

Q. Mr. Terrell, have you any figures upon which you make an estimate of the cost of performing this truck service?

A. The only figures I have of the cost on the operation of a truck between Henderson, is between Hamlet and Monroe, which I procured for the purpose of making an estimate as to the cost.

Q. How long has that service been in operation?

A. About three years, I think, I'm not sure of that.

Mr. Watkins: May I ask a question here for the purpose of objecting?

Mr. Abeles: Yes.

Mr. Watkins: Is that Monroe-Hamlet operation in your division?

The Witness: No, sir.

Mr. Watkins: Did you make these figures?

The Witness: No, sir.

Mr. Watkins: Mr. Commissioner, I object to his testifying, concerning that.

The Chairman: The objection is overruled and exceptions.

Mr. Watkins: May we not have exceptions?

The Chairman: Exceptions, yes.

By Mr. Abeles:

Q. Proceed with your answer, Mr. Terrell.

A. Well, do you want me to go into details with it or just the cost per mile?

[fol. 769] Q. The cost per mile.

A. The cost per mile there averages 15.3¢ per mile.

The Chairman: 15.3¢.

The Witness: Yes.

By Mr. Abeles:

Q. On the basis of 15.3¢ per mile, will you give us the approximate estimate of how much this truck will cost per month and per year?

A. That will be per month approximately——

The Examiner: That is the truck from Richmond to Henderson?

Mr. Abeles: Yes.

The Examiner: Not Hamlet and Monroe?
Mr. Abeles: No.

(Discussion off record.)

The Witness: Of the entire service it would be about the rate of $1025 per month.
The Chairman: How much?
The Witness: $1025 per month.

By Mr. Abeles:

Q. Slightly more than $12,000 per year?
A. Yes, sir.
Q. Now, do you know the type of truck that has been operated on the Hamlet-Monroe line?
A. Only from this record that I received.

Mr. Watkins: Mr. Commissioner, it seems to me this is more or less hearsay testimony.
[fol. 770] The Chairman: I think he proposes to show they have determined also from their records, which we have admitted, operating cost per mile. Now, he proposes to show the type of truck used between Hamlet and Monroe. The purpose of showing it, I assume, is that the same type of truck will be used from Richmond to Henderson.
Mr. Abeles: Exactly, that these figures are conservative and have a sound basis.
Mr. Chairman: I think that would be competent.

By Mr. Abeles:

Q. Have you any reason to believe the cost of 15.3¢ per mile expended by the Hamlet-Monroe truck line will be exceeded by the truck which you propose to use on the Richmond-Henderson route?
A. No, sir. I figure that ours would run about the same thing.
Q. Are you going to have the same size trucks?
A. No, sir. We are figuring on using a lighter truck than they use there.
Q. Does it cost more or less than the truck used on the Hamlet-Monroe line?
A. Do you mean to operate?
Q. No, the initial cost?

A. I don't know what the initial cost is. I can't answer that.

Q. Now, the figure of fifteen and a fraction cents per [fol. 771] mile, on the basis of which you have made an estimate, includes what costs?

A. It includes taxes, insurance, licenses, drivers' salaries, fuel, lubricants, tires, repairs and other supplies.

Q. And does it include the depreciation on the truck?

A. Yes, sir, depreciation and interest.

Q. At what rate?

A. At 6%.

Q. You mean the interest on the investment?

A. Yes, sir.

Q. At 6%?

A. Yes, sir.

Q. Do you happen to know whether the cost figure which you have used was developed throughout the entire life of the truck used on the Hamlet-Monroe route?

Mr. Watkins: I want it understood, Mr. Commissioner, that I'm objecting to all of this testimony that this witness is giving about the details of these cost figures, in that he has already testified he did not make those cost figures and it was not under his jurisdiction.

The Chairman: Do you know those details were considered in arriving at the cost figures?

The Witness: I have a statement from the superintendent who handled that.

The Chairman: He gave you a statement showing what [fol. 772] made up the 15.3¢ per mile?

The Witness: Yes, sir.

The Chairman: He is Superintendent of the Seaboard Air Line?

The Witness: That is correct.

Mr. Abeles: Mr. Chairman, I can have the witness state details of items entering into this total, in the interest of expedition—I thought it wouldn't be necessary.

The Chairman: The protestants move to strike out all the testimony of Mr. Terrell as to the cost of operating the truck from Monroe to Hamlet. The motion is denied.

Mr. Watkins: We will take exception.

The Chairman: That preserves your right?

Mr. Watkins: That's right.

By Mr. Abeles:

Q. Who had the last question?

(The question is read.)

By Mr. Abeles:

Q. Do you understand the question?

A. The information that I have is that it was.

Q. Was the truck retired at the end of the period for which these cost figures were compiled?

A. The statement shows that it was.

Q. And does the depreciation entering into this cost per mile reflect the salvage value of that truck?

A. Yes, sir.

Q. You might state the salvage value?

[fol. 773] A. $250.

(Discussion off record.)

The Chairman: Are these estimates which you have just testified made from cost figures which you know to be records of the Seaboard Air Line Railway Company?

Mr. Abeles: I'm glad you asked that question, Mr. Chairman. Can you answer that Mr. Terrell?

The Witness: Yes, sir. They were made from the figures in the auditor's office at Hamlet.

By Mr. Abeles:

Q. And by whom was the statement compiled?

A. By the division auditor at Hamlet.

Mr. Abeles: Does that answer your question?

The Examiner: Yes, sir.

The Chairman: Mr. Terrell, can you give us the gross revenue from less carload freight between Henderson and Richmond, for two typical months of this year?

The Witness: I don't have it divided that way.

(Discussion off record.)

Mr. Abeles: Might I in the interest of clarity ask whether you refer to the gross revenue received on all, and forwarded rather than received? I understood your question to say received, did it not?

The Chairman: No, all revenue from LCL freight between Richmond and Henderson.

Mr. Abeles: That is both received and forwarded?

[fol. 774] The Chairman: Both received and forwarded, regardless of its origin and destination.

Mr. Abeles: We can give you that. The reason I asked that question is because it is quite clear that that would reflect revenue on shipments at those two points which was either consigned to or originated at points far removed from the territory involved here.

The Chairman: If you could segregate that and give us the actual revenue apportioned to that division on less carload shipments, we would rather have it.

Mr. Abeles: The freight, we haven't got that. I'll let the witness answer that.

The Witness: I don't have it in that form, no, sir.

By Mr. Abeles:

Q. What have you, Mr. Terrell?

(Discussion off the record.)

Mr. Abeles: I think that is clear. If it isn't we want to make it entirely clear that the figures the witness will give you for Richmond and Henderson include the Seaboard revenue to and from all points, regardless of whether they are points on the route involved in this proceeding or elsewhere throughout the system.

The Chairman: You have no way of segregating the origines, you have not done so?

The Witness: No, sir.

The Chairman: These are less carload shipments, now?

[fol. 775] The Witness: Yes, sir.

The Chairman: All right, sir.

Mr. Abeles: Do you wish those with that understanding, Mr. Chairman?

The Chairman: Yes, if that is the best you can give us.

The Witness: Mr. Winborne asked for a two months' period.

The Chairman: Any you select.

The Witness: The 11-month period we have worked up. I didn't prepare these figures. They came from the auditor's office.

Mr. Abeles: It was Richmond and Henderson you wanted was it?

The Chairman: Yes.

By Mr. Abeles:

Q. Did you give the date of this period?

A. This period is from February 1, 1936, to December 31, 1936.

Mr. Abeles: Do you want all the intermediate stations?

The Chairman: I thought he was going to give the total less carload revenue between those points.

Mr. Abeles: For all stations between those points?

The Chairman: Yes.

Mr. Abeles: Mr. Chairman, I have a statement here showing that information, and I would be glad to introduce it as an exhibit.

The Chairman: All right.

[fol. 776] (Exhibit No. 1, Witness Terrell, is marked for identification.)

By Mr. Abeles:

Q. Mr. Terrell, I understood you to say that at least a part of the less carload freight shipments which will be carried by the proposed truck service will come from connections of the Railway, north of Richmond, is that correct?

A. That is correct, yes, sir.

Q. And that traffic, that less carload traffic of which we are now speaking, is shipments consigned to points to be covered by the proposed truck service, is that correct?

A. That is correct.

Q. Now, is that the traffic, Mr. Terrell, which is today carried by the trucks? Do you see what I mean?

A. No, sir. It is freight which is delivered to us by the connecting railroads at Richmond.

Q. And is that true with respect to all other traffic for the transportation of which we are proposing to establish this truck service?

A. Yes, sir. We are proposing to establish the truck service to take care of the less carload business now being handled by us. We figure it will be handled by the use of the trucks put on.

Q. At the risk of some repetition, but in order to clarify the record, I would like to ask you again whether it is our [fol. 777] purpose in establishing the proposed truck service to carry any traffic which is not now carried by rail?

A. No, sir. It is not.

Q. Mr. Terrell, if the suggestion were made that there are now operating between Richmond and Henderson, Independent Motor Carriers and that we could accomplish the purpose that we have in mind in establishing the service for which we are here seeking authority, by utilizing those independent existing agencies, what would you say as to that suggestion?

A. I would say that we should not do that, sir.

Q. Why?

A. For various reasons. We would not have exclusive control over the truck schedules; for that reason, we would lose the element of flexibility of service not being able at all times to adapt the truck service to conform to our train service, and connections.

Q. Is that an important factor to us?

A. Yes, sir, it is.

Q. Why?

A. At various times for some purpose or some reason we might have to change schedules, we would want to change our truck operations, of course, to meet it.

Q. Go ahead.

A. And the other truck line that was handling it for us they would probably have their schedules set up to meet [fol. 778] some other conditions and maybe we couldn't get it changed at the same time.

Q. And if we could not control the schedules, would we be able to accomplish the purpose we have in mind?

A. No, sir, that would defeat the very purpose for which we are putting on the trucks.

Q. Because as I understand it this whole plan will revolve around the coordination of our rail and truck service?

A. Yes.

Q. Is there any other reason why we could not practically employ independent motor carriers?

A. We would not have direct supervision over the drivers or other employees on the trucks and we would be unable to properly supervise the service that they render, or to take any disciplinary action in case the trucks were

not properly handled or the freight is not properly handled, which we would be turning over to the competitor some business that we were in business to handle, short-hauling ourselves; and we don't think any company deliberately does that.

Q. Any other reasons?

A. We would be making available our records so far as business moving and give the competitor a chance to solicit business that we were handling.

Q. Is that either sound transportation practice or a practice which has any precedent within your knowledge?

[fol. 779] A. Not any precedent within our knowledge. We don't try to make those things public.

Q. Do we even do that with our rail competitors?

A. No, sir, we do not.

Q. Is there any other reason?

A. Another reason would make it almost impossible to have an accounting system to divide the revenues. I don't know how we would ever work it out so that we could make a proper settlement.

Q. For the revenue, you mean?

A. To divide the revenues.

Q. Would it have any effect upon possible claim for loss or damage?

A. Yes, sir. That would be quite an item to determine where the damage occurred, especially in case of concealed damage or loss.

Q. And would it have any effect upon the number of interchanged necessary on this less carload traffic?

A. Yes, sir. That would mean that many more interchanges.

Mr. Abeles: That is all.

(A short recess was taken.)

Mr. Abeles: I think we can give you fuller and more expansive answers to your inquiry if you will permit us to recall Mr. Terrell for just a few minutes.

The Chairman: All right.

[fol. 780] Mr. Abeles: Your inquiry involves the volume of tonnage which will be handled by intermediate stations by these trucks.

The Chairman: Very well.

By Mr. Abeles:

Q. Mr. Terrell, the Chairman asked you whether or not we had any information showing the volume of shipments made to and from the stations intermediate between Richmond and Henderson which would be transported by the truck service if established. I understand that is the question you asked, Mr. Winborne?

The Chairman: That is right.

By Mr. Abeles:

Q. Have you been able to develop that information?

A. Yes, sir.

Q. We have introduced as exhibit No. 1, a statement showing the less carload freight received and forwarded at Richmond and Henderson and intermediate points for the 11-months' period from February 1, 1936, to December 31, 1936. Do I understand that you have made the computation which you are about to give from that statement?

A. Yes, sir.

Q. Now, how did you arrive at those figures?

A. We deducted the tonnage handled at Richmond and Henderson and using the tonnage at the intermediate stations.

Q. Why have you deducted the tonnage at Richmond and Henderson?

A. Because we do not figure to handle that by truck. [fol. 781] We are figuring to continue to handle that in cars.

Q. Now, proceed.

A. This figuring it this way, it shows that these intermediate stations will receive approximately 12 tons per day, and forward approximately the same amount.

The Chairman: Receive 12 tons a day and forward approximately the same amount?

The Witness: Yes.

By Mr. Abeles:

Q. What revenue would accrue to the Seaboard on that business approximately?

A. Taking this same statement and figuring it the same way, it would amount to about $4000 per month.

Q. And your operating expenses of this truck, I believe you stated, were approximately what?

A. $1000.

Q. About $1000 for what period?

A. A month.

Mr. Abeles: Is there any further information the Chairman would like?

The Chairman: I think not.

Cross-examination.

By Mr. Watkins:

Q. Mr. Terrell, that includes the tonnage to and from Petersburg?

A. Yes, sir.

Q. Wouldn't there be about as much reason to exclude the [fol. 782] tonnage to and from Petersburg as to exclude Henderson and Richmond?

A. No, sir. We wouldn't because we expect to handle from this territory from and to Petersburg on a truck.

Q. And that $4000 is for freight moving within this territory and not beyond it?

A. Yes, sir. That is correct. That is the approximate figure.

Q. Do you mean that figure is the gross revenue on the tonnage in and out of these points?

A. That is correct.

Q. Seaboard revenue?

A. Yes, sir

Q. Regardless of origin or destination?

A. Yes.

Q. So it would cover, for instance, freight that moved from Washington, D. C., to Norlina?

A. Yes, sir

Q. The Seaboard, of it?

A. Yes, sir.

Q. Therefore the properly allocated part of the gross revenue to this truck haul would be less than $4000, would it?

A. Let's see if I understand that. That would be the Seaboard Revenue accruing on freight moving by truck into these points. Of course, some of that would previously [fol. 783] have been moved by rail, if that is what you mean?

Q. Yes. Therefore in order to find out the effect of this particular segment it would be necessary to reduce this $4000 a month by some amount?

A. Yes, sir

Q. Would it?

A. Yes.

Q. Have you got any estimate as to approximately how it should be reduced?

A. No, sir. I haven't those figures available. It would be somewhat less.

(Discussion off the record.)

By Mr. Watkins:

Q. Would the Seaboard Railroad earn $4000 per month from the freight that is moving on this truck?

A. Yes, sir. It would earn that much, but some of that revenue, of course, would cover the movement prior to the time it was placed on the truck. If that is the way to answer that.

The Chairman: The truck alone would not earn $4000 per month, is that what you mean?

The Witness: Yes. The truck alone would not earn $4000 per month.

By Mr. Watkins:

Q. Is there any way you could take this 12 tons per day moving in and out of this area and estimate the amount of that, that would move entirely by the truck service under proposal?

[fol. 784] A. No, sir, not from any statement that I have so far.

Q. Well, generally speaking, does the freight in and out of these points move from and to these points or does it move from and to other points?

A. From and to other points,

Q. Then the larger portion of the freight would move from and to other points than on this particular division?

A. No, sir. I wouldn't say a larger portion of it. I would say that 70 per cent of the freight would move into this territory from local Seaboard stations, that is Richmond, Norfolk, Henderson, Raleigh, and the other would come from foreign lines.

Q. What I'm speaking about, Mr. Terrell, when I was speaking of the local freight, I was speaking of freight local to the area you are going to serve by truck as against freight moving from and to other points. Could you estimate the division on that basis?

A. Well, that is what I mean, sir, by the 30 and 70 per cent.

Q. As I understood it when you said 70 per cent you said from Norfolk and other points not included on this list?

A. Yes, sir. But it still moves in by truck.

Q. It wouldn't move all the way by truck, would it?

A. Well, it would move all the way by truck, I would still say 70 per cent. No, not that much, I would say 60 per cent, because in this particular territory most of the freight is from Richmond and Petersburg.

[fol. 785] Q. That is where it originates?

A. Yes, sir

Q. So 60 per cent then, about 60 per cent of this $4000, would represent that that was earned by the truck alone?

A. The approximate figure, that would be as near as I could get to it, yes.

Q. That is $2400 a month?

A. Yes.

Q. Now, these figures as I understand it are your gross revenue figures?

A. Gross Seaboard revenue.

Q. Gross Seaboard revenue?

A. Yes.

Q. How does your net revenue relate generally on the Seaboard system to the gross revenue?

(Discussion off the record.)

By Mr. Watkins:

Q. The last question was how does the net revenue generally relate to the gross revenue?

Mr. Abeles: In view of the fact that the witness has testified that approximately 60 per cent of the gross revenue which he has stated would accrue from the receipts and delivery at these local points, and that we have shown the cost of operating this truck per month, it seems to me that the question which counsel has just now asked, namely, the proportion of gross revenue throughout the system

[fol. 786] which would constitute net revenue is entirely irrelevant because the net would be represented by the difference between the gross revenue earned, strictly, and specifically by the truck operations and the cost of operating that truck itself.

The Chairman: The answer would be from his testimony, $1400 per month, approximately?

The Witness: Yes, sir.

The Chairman: I think that answers that.

Mr. Watkins: I don't think so at all, Mr. Commissioner, because it has been testified to in this hearing that they did not contemplate the removal of any rail service, but they want to inaugurate a truck service. Their cost of operating rail service is not going to be decreased at all under their proposals, but they are going to add an additional $1000 per month to handle the same traffic they are now handling.

The Chairman: You might ask him about the cost of the rail service. You had not asked him about that.

Mr. Watkins: That is why I wanted to get this figure in the record, as to the relation between gross and net income. Can you answer that question?

The Witness: No, sir.

By Mr. Watkins:

Q. You can testify as to the revenues and everything on your Division, but you don't know what you- Division earns?

A. No, sir, not in that shape; no, sir.

[fol. 787] Q. What is the net operating income of your Division?

A. I haven't those figures available, sir. I can get them.

Q. Would you please supply the record with the gross operating income from your entire Division and the net operating income from your entire Division?

(Discussion off the record).

Mr. Abeles: I have no objection whatsoever to the witness furnishing that information if it is available; but before any action is taken on that request, I would like to explore whether or not it is available in any form which would be significant or material to what counsel has in mind.

The Chairman: The Board would be very glad to have

that information as it has never been able to procure it before. If the company could get it now, it would serve us well.

Mr. Abeles: In order to determine whether or not the information is available, might I ask the witness at this point a question or two?

Mr. Watkins. Yes.

Redirect examination.

By Mr. Abeles:

Q. Mr. Terrell, do you know of any data available from the accounting records or elsewhere which would furnish you the net cost of transporting less carload shipments on your Division?

[fol. 788] A. No, sir.

Q. Or the proportion between the gross revenue earned from less carload shipments, and the cost of transporting those shipments?

A. No, sir. I do not.

Mr. Abeles: It seems to me, therefore, Mr. Chairman, the answer to Mr. Watkins' request is that we have no data which would answer his inquiry.

The Witness: I would like to state that I did not understand your question as applying to less than carload business.

Mr. Watkins: If you can't give it to us for LCL business, give it to us on all business.

The Witness: I don't know whether I can do that. I will see if I can.

The Chairman: I would like to have it if you could furnish it.

The Witness: I don't know whether I have it. We will see what we can do. We don't keep our records in that shape.

Mr. Abeles: I can say this, Mr. Chairman, that within my knowledge it has never been found possible to determine the exact cost of transporting a particular commodity or class of shipment; and that no accounting methods yet devised have been able to furnish information to the Commission by which that could be accurately computated. I [fol. 789] think that the Examiner is familiar with that fact.

Mr. Watkins: I can state that within my knowledge, when

shippers were asking for reduced rates on LCL traffic, that rail representatives have always said they knew they were losing money on it.

Mr. Abeles: That is quite a different proposition from giving him the exact cost of transporting that.

The Chairman: You may proceed.

Mr. Abeles: In response to that observation, I might say that being a fact, one of the primary purposes of what we are seeking here is to reduce those losses.

Mr. Watkins: That is obvious.

Recross examination.

By Mr. Watkins:

Q. Now, Mr. Terrell, you spoke of some of the difficulties of interchanging freight with Motor Carriers?

A. Yes.

Q. One of them was the number of interchanges. Would there be any difference in the number of interchanges in handling traffic that moves into a point like Henderson by rail and out by truck if it was your own truck, than if it were somebody else's truck?

A. Yes, sir. As I see it there would be quite a difference.

Q. What?

A. Because we would not try to make any division in the revenue.

[fol. 790] Q. I'm speaking now simply of the number of interchanges. Take them up in the order which you spoke of them. You said the number of interchanges would be increased?

A. Yes.

Q. How would it be increased?

A. I said transfers.

Q. How would that?

A. Increases in transferring from one company to another instead of to our own trucks.

Q. Would there be any difference in the physical handling?

A. Yes, sir. The truck people, I naturally assume, would want to load their freight, including checking into their car instead of being handled by our force.

Q. If they brought their truck to your platform and the freight was put on it, what difference in the physical han-

dling of the traffic would there be than in handling it on your own truck?

A. Difference in checking it by the truck people as against one check by our own people. That is the only difference.

Q. The only difference would be a double check instead of single check?

A. Yes.

Q. That is the basis of your statement about additional transfers?

A. Yes, sir.

[fol. 791] Q. Your next observation was loss and damage, particularly concealed damage?

A. Yes.

Q. You interchange with other railroads, do you not?

A. Yes.

Q. You have the same difficulty there?

A. Yes, sir. Well we have the same difficulty, but a setup rule as to how the settlements will be made.

Q. If similar rules were set up here, there would be no difference there, would there?

A. No.

Q. That is purely a matter of setting up rules to handle it?

A. That is correct.

Q. The impossibility of an accounting system is your next observation, was it?

A. I don't recall just how I put it, I may have stated that.

Q. What did you mean by it?

A. I meant it would be necessary to open up another set of accounts with another trucking company instead of handling it ourselves.

Q. All that would be necessary would be opening up another interchange account?

A. Yes sir.

Q. And if you are going to keep the record of your truck operations separate from that of Rail operations, [fol. 792] wouldn't that be necessary anyway?

A. We were not figuring on doing that. That is the reason I mentioned that fact.

Q. You are not figuring on it?

A. No, sir.

Q. Didn't you testify that you kept your figures separate on the Monroe-Hamlet branch?

A. Only the cost of operating the truck not as to the revenue received.

Q. You kept the cost figure separate, but not your revenue figure?

A. Yes.

Q. But if the Commission required the keeping of your cost and revenue figures separate, there would be no distinction there, would there?

A. You mean if they required us to keep it?

Q. Yes.

A. I see. No, sir. I don't think there would, except we would handle all the records ourselves. That would be the only difference.

Q. You would have records of any interchange anyway, would you?

A. I don't know——

Q. You would have to keep that anyway, would you?

A. You mean if we made this same arrangement with [fol. 793] the truck company that we did with another railroad company?

Q. That's right.

A. That would be the same.

Q. The same accounting system?

A. Yes.

Q. Your next one was that your records were available to competitors. Aren't you competitive with certain rail carriers at certain points?

A. Yes, sir.

Q. And you interchange freight with those rail carriers, don't you?

A. Not movements to the same territory that we move to or the same station that we move to.

Q. But they do see your bills of lading?

A. They have to as it goes through.

Q. But not to strictly local traffic?

A. Not on local traffic.

Q. But whenever you interchange, your movement of freight is known to the man that you interchange with?

A. As to the freight that goes to his line, that's right.

Q. That goes to him?

A. Yes, sir.

Q. Do you think that the Seaboard Air Line Railroad is today making money on the less truck load freight moving on this Division?

[fol. 794] A. I'm not prepared to say, sir. I have not broken it down; I couldn't say.

Q. The purpose of this is to increase your revenue, isn't it, or to decrease your cost?

A. Well, the sole purpose that we had, sir, was to expedite the movement of the freight, that is so far as I am personally concerned. That is the end I'm working to.

Q. Do you think it would increase your cost or decrease your cost of operation?

A. I think it would decrease cost of operation.

Q. Then it would be a saving?

A. A slight saving, yes.

Q. Then handling of less carload merchandise freight by Motor Carriers is cheaper than handling it by rail carriers?

A. I'm not prepared to answer that, sir. I think it would be with us where we have our forces set up that could handle both the truck and the cars. I don't know what their cost of operation and overhead is. The operation at their various terminals, I don't know how that works.

Q. Then there are some other cost factors in the handling of less than truck load traffic other than those you had in that figure from Hamlet to Monroe?

A. I don't know that there are, sir. This was strictly the cost of handling a truck. We do not expect to increase or decrease our forces at the stations where we handle. We [fol. 795] figure we will handle with the same force that we have now.

Q. Some of these points you show on these routes are not agency stations, are they?

A. Some are not.

Q. Are you figuring on putting an agent there?

A. No, sir.

Q. How would you handle freight into there, coming in there at one and two and three a. m. in the morning?

A. Put it in the warehouse and lock it up just as we do with carloads.

Q. Is an agent at other points going to meet the truck at night?

A. No, sir.

Q. Do you give pick-up and delivery service by motor carrier at these points?

A. You mean at the agency stations?

Q. Yes, agency stations?

A. Let me see if I know what you mean by motor carriers. I don't know as I am clear on that.

Q. By truck.

A. Yes, sir. Some places do. I didn't know whether you meant licensed trucks or just what you meant.

Q. How many of them do you?

A. You mean at these intermediate stations?

Q. Yes.

[fol. 796] A. At Petersburg, Henderson. I think they are the only two places where a regular truck handles the business. At the other places they are handled by merchants or somebody with a wagon. The places are so small.

Mr. Abeles: My understanding of your question is not by whom it is handled, but whether it is handled at all.

By Mr. Watkins:

Q. Where do you give pick-up and delivery service?

A. Petersburg, Dinwiddie, McKinney, Alberta, Grandy, Skelton, LaCrosse, Bracey, Wise, Norlina, Ridgeway, Manson, and Greystone.

Q. Another objection that you raised to interchanging traffic with a motor carrier is that you would not have supervision over their deliveries?

A. Yes.

Q. Do you have supervision over the engineers of the railroads that you interchange with?

A. No, sir.

Q. Then when you interchange freight with a rail carrier you have no supervision over that or other carrier's employees today?

A. No, sir.

Q. So in that instance there would be no difference from interchanging with a railroad, is that correct?

A. Not if it was turned over to him as a common carrier [fol. 797] and our responsibility ceased, then it would not.

Q. If a common carrier, motor carrier, interchanged with you there would be no difference as far as this is concerned than from interchanging with railroads?

A. That is right, as far as I know.

Q. Do you have control of schedules of your railroads connections?

A. No, sir.

Q. Then your objection of having no control of schedules of the motor carrier would be no more than it now is in interchanging with the railroads?

A. Yes, sir. I think there would be some difference in that, if I'm qualified. Where we interchange with other railroads, we do not interchange with railroads who serve the same places that we are going to serve, and therefore——.

Q. I'm speaking now simply of the idea of control of schedule which you named as one of your objections and I asked you would you have any more control over your railroad connections than you would have over your motor carrier connections?

Mr. Abeles: I have not previously interrupted the counsel in this line of questioning. It seems to me obvious that Mr. Terrell's direct testimony was confined to the suggestion of the way we could interchange traffic over the territory involved in this application, with other existing motor carrier agencies.

[fol. 798] Mr. Watkins: The questions went far beyond that territory and I'm asking about supervision, records and other matters to which he has all ready referred, all over the system.

Mr. Abeles: For example, in his last question which related to the coordination of schedules, he asked whether or not he could control the schedules of our other train connections. Obviously not, but the only pertinent question is whether we can control the schedule of the proposed truck service we are using in coordination with train service in this territory.

The Chairman: So far it is going a little bit far.

Mr. Watkins: My position is this. Mr. Abeles, by his leading question attempted to leave the inference that it would be very much more difficult in interchanging with motor carriers than with interchanging with railroads. And I'm trying to show that the interchange is itself identically the same regardless whether with railroad or truck line.

The Chairman: Here is the general position, as I get it from his answer, gentlemen, that if the Coast Line Railroad had a line running to McKinney, South Hill, Norlina, that the Seaboard would not interchange freight at Richmond and turn over less carload freight to the company's line for the same points; that these truck operators serve the same points that the Coast Line, in the illustration, [fol. 799] might serve; and therefore it would not turn over, that the company would not be expected to deliver freight to the trucks for the same points that they themselves serve.

Mr. Watkins: I understand that is his position, but I'm trying to show that other than that there is no difference in the interchange between a motor carrier and the railroads. And I think that the witness has demonstrated that the only objection is competition and that the other objections are really not objections because he has those same difficulties when he is interchanging with other railroads.

The Chairman: I think that, Mr. Watkins, is a matter of argument. He testified on his direct examination about which you cross-examined, that competition was one element that is considered. When it comes to argument in the case, of course, it is your privilege to contend that is the controlling element.

Mr. Abeles: I don't want to prolong this discussion, but I want to make it clear that I understood Mr. Watkins' questions and I assume the witness did, to relate to parts of the system other than those covered by the proposed train operations. When he asked for an example of whether or not we would have the same difficulties in coordinating train schedules with other train connections, my objection was predicated on the fact that we would make no such interchange over routes to and from stations served by our [fol. 800] lines. And if he confines his questions to truck operations and if he confines his inquiries to the truck service performed between Richmond and Henderson, I concede the relevancy; but not between any other points on the Seaboard system.

The Chairman: I think the proper limitations of the examination is the coordination of service and other things affecting it between Henderson and Richmond.

By Mr. Watkins:

Q. Do you know what schedules are maintained by common carrier motor vehicles in this area?

A. No, sir.

Q. Do you know how many companies are operating in this area?

A. No, sir.

Q. Have you given any study to the motor carrier competition which you have?

Mr. Abeles: He said he didn't know anything about motor carrier transportation in this territory. I think that answers that.

Mr. Watkins: You think he said no?

Mr. Abeles: Yes.

By Mr. Watkins:

Q. When you made the statement you didn't think this operation of yours would interfere in anyway with the existing motor carriers, you made that without knowing the service of the motor carriers?

A. Yes, sir. I did not know the service that they have in there.

[fol. 801] Q. Now, if by any change there were motor carriers with service identically as your proposed schedules, would there be any more difficulty, other than the competition, of interchanging with them than with your own controlled truck lines?

Mr. Abeles: He has been into that, Mr. Watkins, considerably.

Mr. Watkins: I asked him other than his competitive situation.

Mr. Abeles: He has outlined five reasons why it would be utterly impracticable to employ other certificated motor carrier service for accomplishing that purpose that we have in mind. It seems to me that the question the counsel has just asked is simply requesting him to repeat those reasons. If the Board wants it, all right.

The Chairman: Let him answer that question and then we will see how much farther we go.

(The question is read.)

The Witness: Yes, there would be some difference, Mr. Watkins. We would have to arrange, if another carrier

handled this, to provide them with ways of getting into our stations at night, taking care of seeing that the freight was properly taken care of there as it was unloaded, etc.; otherwise, I would think there had been no difficulty.

By Mr. Watkins:

Q. If they were common carriers they would be under obligation to take care of the freight under the law?

[fol. 802] A. Yes, without furnishing the stations, etc., we would like to have some control of that.

Q. Would it be possible for you to furnish a statement showing the tonnage moved between the points on this route excluding Richmond and Henderson, such as shipments from Greystone to McKinney, or Greystone to Norlina?

(The question is read.)

Mr. Abeles: You mean moving exclusively between intermediate points between Richmond and Henderson?

The Witness: It could be gotten, Mr. Watkins. I don't know just how soon. We would have to go to our auditing department in Norfolk to get that information. Just how complicated it would be, I'm unable to say.

Mr. Watkins: I'm wondering if that won't be helpful to the Commission?

Mr. Abeles: I don't see how, Mr. Chairman.

The Chairman: His testimony, Mr. Watkins, is a pretty near approach to what the income from the intermediate stations would be. It is not exact, but it gives us a pretty good idea. After excluding Richmond and Henderson, then we have the amount of receipts, the amount received from goods from incoming and outgoing shipments from those points. About 60 per cent of it, he testified, was within the territory, moved within the territory. Let me clarify that. [fol. 803] If we can get it closer than that without an unreasonable amount of trouble and delay, why we would like to have it.

Mr. Watkins: As I understood his testimony, the 60 per cent included Henderson and Richmond.

The Chairman: I didn't so understand that.

Mr. Abeles: No.

The Chairman: I may be incorrect in my memory.

Mr. Abeles: My understanding was that it did not include Richmond and Henderson, but the witness can probably clear that up.

The Witness: I meant that it did not include Richmond and Henderson. I meant approximately 60 per cent of the freight moving into these intermediate stations moved to Richmond, Petersburg and Henderson. The other came from foreign lines and through Portsmouth and that way.

Mr. Abeles: But that 60 per cent does exclude any traffic which would not move by these trucks.

The Witness: Yes.

The Examiner: Your cost figure of $1025 per month, that includes purely operating cost of truck, not station cost, overhead, or allocation of other expenses incident to the handling of freight handled by truck?

The Witness: That is correct, sir. Just the operation of the truck.

The Chairman: All right, Mr. Watkins.

[fol. 804] Mr. Watkins: You don't think it would be advisable then to try to get those figures?

The Chairman: Not unless they can be reasonably gotten.

By Mr. Watkins:

Q. Where would you get them, Mr. Terrell?

A. From Norfolk. I doubt if we could get them by tomorrow night. I doubt if we will be able to get them.

The Chairman: If we could get them anything like as soon as that, I think we ought to have them.

The Witness: I stated to Mr. Watkins that I don't know just how long it would take to get them.

The Chairman: If you could *d*urnish the Board with them within the next week, that would be all right.

Mr. Abeles: Your Honor, to make it absolutely clear just what Mr. Watkins wants, I would like to have him restate what he is requesting.

Mr. Watkins: I'm requesting figures of tonnage and revenue moving between points on this line, other than Henderson and Richmond.

Mr. Abeles: Moving to these points?

Mr. Watkins: Between.

Mr. Abeles: If that information can be obtained, Mr. Chairman. Of course, we have no o*n*jection to doing so, but I can't see just what Mr. Watkins is after in requesting that information, because it seems to me that the only information which could in any sense be useful in connection with

[fol. 805] this proceeding would be the volume of movement which would move by trucks.

The Chairman: I don't think it presents a fair picture at all if you were to exclude the LCL movements originating in Richmond for this particular territory, or from Henderson to this particular territory.

Mr. Abeles: Exactly.

The Chairman: That would be moved by trucks if the franchise is granted. It ought to include every movement the truck would handle.

Mr. Abeles: That is precisely my point.

Mr. Watkins: I'm perfectly willing to include that.

The Chairman: If he gives us that information, I will be glad to have it.

(Discussion off the record.)

Mr. Abeles: I would like to have your question on the record.

The Examiner: Is the theory of your case so far, based upon this basis, that the benefits to accrue by reason of this new service involved in this application are principally a more expeditious handling of less carload freight between certain points, and an operating economy which accrues to the railroad system as a whole, rather than a theory or a basis of an independent profitable truck operation?

Mr. Abeles: Mr. Examiner, I can answer that question [fol. 806] in this way, Primarily the purpose we have in mind is to expedite the movement of the less carload shipments that will be handled by the proposed truck service. I shall have a witness expand upon that answer a little further.

With regard to the economy which might result from the establishment of this truck service, and replying to your inquiry as to whether or not we conceived of this proposal as profitable, and if it is independent, and if it is a coordination feature with the railroad service, and that is extremely difficult to answer. A reply to that question would involve a thorough statistical investigation of the revenue which would accrue to the system from the traffic which will be handled by these trucks, a figure which could be easily obtained, and which has already been made of record in this proceeding; and further an investigation from the way bills covering each individual shipment over a given period of time to determine its origin and destination; and secondly,

the proportion of the total mileage which the shipments move by rail and truck respectively. That would require, I feel sure without being an accountant, an extremely laborious and expensive inquiry, and I hesitate to state to the Examiner that we could furnish that. But in view of the primary purpose which we have in establishing this motor service, it seems to me that that inquiry is of only subordinate importance if it is material at all.

[fol. 807] The Examiner: My inquiry at this time was due to the fact that it seems that the hearing was headed in some such direction as that as to the question of the cost and profit on an independent basis.

Mr. Abeles: Only, may I remark, through the cross-examination of counsel for protestants; and I might say also, that, while of course we could not furnish any such statistics at this time, I shall investigate to determine whether or not it is practical and if I find that it is, without inordinate expenses and time, it will be furnished.

The Examiner: You may proceed.

By Mr. Watkins:

Q. Mr. Terrell, at this time, you have made no investigation to determine the economy that would be accrued to the Seaboard Air Line Railroad as a whole of this proposed service?

A. No, sir, I haven't.

Q. And at this time you have not made any study to determine whether or not the motor carrier service taken as a separate unit would be a profitable operation or not?

A. No, sir.

Q. This figures of 15.3¢ per mile, represents purely the road cost of operating a truck?

A. Yes. That is correct.

Q. Interest, insurance and all those come in; but it does not include the question of overhead, unloading, accounting, clerical billing, or any of those figures?

[fol. 808] A. No, sir.

Q. I believe you stated that you did not expect any additional traffic to accrue to the Seaboard Railroad as a result of the inauguration of this new service?

(The question is read.)

A. I don't recall saying that, Mr. Watkins. I may have. What I meant was as far as I was concerned, we were in-

augurating this service simply to get truck service started and expedite delivery of the freight we were now handling.

Q. Do you expect any additional traffic?

A. I'm not in position to say personally. I don't think we will get, in this particular territory, additional traffic, to amount to anything.

Q. Your personal view is you will not get any additional traffic?

A. Yes.

Q. Even though you are creating a better service?

A. Yes, but——

Q. You don't think the question of service has anything to do with increasing tonnage?

Mr. Abeles: Let him finish the answer.

The Witness: I meant at least, Mr. Watkins, to clarify myself, that so far as I'm individually concerned we were putting on this simply to take care of the business we have now, making an earlier delivery of freight by freight trains [fol. 809] over a suggested line there, if it was possible to do it. Of course, we expect to have some small amount, in stopping the freight trains for this purpose.

By Mr. Watkins:

Q. You are speaking in this case for the Seaboard Air Line Railroad, are you?

A. Yes.

Q. Is it your idea that a better service will attract more tonnage or not?

A. Well, yes, sir. The better service you give, why naturally you would be in better position to handle the traffic, yes, sir.

Q. So by the giving of better service in this instance you assume it will attract some traffic?

A. As I said before I did not expect it to in this particular territory.

Q. Then is it your theory that in this particular territory, a faster service wouldn't mean any additional traffic?

A. In this particular territory, I don't know that it would, sir. No.

Q. Then the public is not demanding any faster service in this particular territory, are they?

A. I qualified the statement to start with. Yes, sir.

There would be some requests for early delivery of the freight that we are handling.

Q. If there is a demand for a faster service that demand must be based upon additional traffic, wouldn't it?

A. Well, as I stated before, I don't know that it is. What [fol. 810] we started out to do was hold what we had and there has been some requests that we get it to them earlier.

Q. But you don't think this inaugurating faster service by this method would attract any additional tonnage?

A. As I stated before in this particular territory, I doubt if it will, sir.

Q. Well, suppose by the use of this service you speeded up the movement of traffic from Raleigh to these points? Do you think it would have any effect there?

A. No, sir. I do not.

Q. Suppose by the use of Motor Carrier service that you here propose and the use of a motor carrier service between Raleigh and Henderson, you speeded up the traffic, would that traffic move by motor carrier all the way or partly by rail and partly by motor carrier?

A. That's right. The only thing that would move entirely by the truck would be some freight moving from one of these intermediate stations between Raleigh and Henderson, to intermediate stations between Henderson and Richmond. That naturally would be on a truck from Henderson.

Q. But you would not move any freight from Raleigh to Henderson by one truck and from Henderson to Richmond by another?

A. No, sir.

Q. Would you be willing for your certificates to be so limited as to prevent that?

[fol. 811] Mr. Abeles: Now, just a moment. We have repeatedly stated our objections in other proceeding to that question, and of course we object to it here. We are considering first of all the isolated proposal here before the Commission. As counsel for the applicants in this case, I will answer the inquiry by saying "No." If you phrase your question "would we have any objections?" my answer, of course, is emphatically yes.

The Examiner: I think that answers your question.

Mr. Watkins: I got it answered. I have just got to get it answered some eight times before the week is out.

By Mr. Watkins:

Q. Then under the application—by the way are you familiar with the application that you have filed for service between Raleigh and Henderson?

Mr. Abeles: I object to that. He is again going beyond the scope of this case.

(The question is read.)

Mr. Watkins: I think you should consider that Mr. Terrell has testified that there was a possibility of a shipment moving from a point between Richmond and Henderson to a point between Henderson and Richmond all by motor carrier. I meant to say between Raleigh and Henderson, and between Henderson and Richmond.

The Chairman: Yes, since it was stated this morning that each one of these applications was urged and asked for the independent of any other application that might be [fol. 812] pending or that might hereafter be made for motor truck franchises, this Board is of the opinion that only the movements within the territory covered by this application should be considered. If we should go beyond that, it would open wide the case for testimony as to part motor movement and part rail movement from one end of the country to the other, and the only practical way of handling this matter as we see it is to limit it to the movement on the route described in the application.

Mr. Watkins: May I urge in connection with that, that on direct testimony, this applicant has shown movements from other points than are covered by this, partly by rail and partly by motor carrier. Now, it seems that in order to get a complete picture we should also see wherein there was a possibility of moving from other points not involved in this particular application, all by motor carriers, as we have already seen the possibility of movement by joint rail and truck service.

The Chairman: In doing that, you would tend to create a greater necessity rather than diminish it, wouldn't you?

Mr. Watkins: I suppose so, but at the same time we would also show to this Board the full extent to which these proposed segments of a truck operation would go when put together; and you would get a much clearer picture of the

effect on competition by motor carrier than you would by limiting it to this simple inquiry.

The Chairman: As I understand the application by the [fol. 813] Seaboard, there are segments by motor all the way from Richmond to Columbia?

Mr. Watkins: And south of there.

The Chairman: If we would admit others, we would have to consider all. We have not the privilege of doing that because we have only one application before us for one segment. Therefore, we will have to rule out the testimony which tends to show the effect of shipments originating on another proposed segment which has not been passed upon, on the route in question in this application.

Mr. Watkins: I will have to note an exception.

The Chairman: To that ruling the protestant takes an exception.

(Discussion off the record.)

The Chairman: All right, gentlemen, we will proceed.

By Mr. Watkins:

Q. It is the proposal here to handle freight that originates at Raleigh and other points south in the north boung truck moving from Henderson to Richmond?

A. Yes, sir. Wait a minute and let me see if I am right. Did you say to handle freight from Henderson to Richmond?

Q. Yes.

A. Not to Richmond, no, sir.

Q. It would be your purpose to handle freight that originates at Camden, Monroe, Charlotte, Sumter, Hartsville, and Hamlet, in your northbound truck moving between [fol. 814] Henderson and points between Henderson and Richmond?

Mr. Abeles: You mean moving by rail from those points to Henderson?

Mr. Watkins: I'm not suggesting how it moved to that point.

Mr. Abeles: If the question is directed to movement by truck from the points named by counsel, to the points on the Richmond-Henderson line, I have the same objection. If his question is confined to the movement of shipments by rail from the points south of Henderson to Henderson

thence by truck to the intermediate territory here involved, I have no objection.

Mr. Watkins: My question did not specify either one.

Mr. Abeles: Then I would object.

The Chairman: Under our ruling you would have to confine it to partial rail and partial truck movements.

Mr. Abeles: Unless the question is made specific, I object to it.

Mr. Watkins: He can qualify his answer.

The Chairman: I want the question to be specific and direct as to whether you mean connecting motor movements or made partly by rail and partly by motor; otherwise, we would be admitting testimony which has been excluded.

Mr. Watkins: In view of the Commissioner's ruling, I will say by rail out of those origin points, and from Henderson north by truck.

[fol. 815] The Chairman: All right.

By Mr. Watkins:

Q. To points served by the trucks?

A. Yes, sir.

Mr. Watkins: However, I want to take exception to the ruling.

The Chairman: All right, sir, exception allowed.

Mr. Watkins: Would it be your purpose to handle freight originating at points between Henderson and Richmond by motor truck destined to points south of Henderson by rail?

The Witness: I didn't follow. Will you read the question.

By Mr. Watkins:

Q. Would it be your purpose to handle shipments originating between Henderson and Richmond by truck, and destined to points south of Henderson on your lines?

Mr. Abeles: Now, again, I want that question clarified, and limited.

The Chairman: On your rail line?

Mr. Watkins: On your rail line.

Mr. Abeles: If I understand the question——

The Chairman: The construction might be placed upon that Mr. Abeles, that he has no other line from Henderson south except his rail line at this time. Now, we are discussing the franchise from Richmond to Henderson. Then

if he has asked the question, if he proposed to remove any [fol. 816] part of this which he brings from Richmond to intermediate points to Henderson by motor on part of his line, the only other part of his line he has is rail line.

Mr. Abeles: If his question asks whether we propose to carry traffic moved by truck from points between Richmond and Henderson and thence beyond by rail. I have no objections.

The Chairman: Over your present facilities. Is that what you confine it to, Mr. Watkins?

Mr. Watkins: Yes, sir.

By Mr. Watkins:

Q. Will you please describe how LCL shipments would move from Petersburg, Virginia, to Wadesboro, North Carolina?

A. The shipments from Petersburg to Wadesboro at the present time insofar as I know them, would be loaded in a car to break bulk at Hamlet, North Carolina.

Q. How would it move from Hamlet to Wadesboro?

Mr. Abeles: Wadesboro, you mean?

Mr. Watkins: Yes.

Mr. Abeles: I think he has already answered that question. If the design is to show any movement by truck again beyond Hamlet, I again object.

The Chairman: I would be against you on that because you already have that line.

Mr. Abeles: I beg your pardon. I overlooked that fact.

The Chairman: That is an existing facility.

[fol. 817] The Witness: My answer is that I'm not familiar with the service south of Hamlet. I don't know how it is handled.

By Mr. Watkins:

Q. Didn't you testify this morning that there was a truck service operated by you between Hamlet and Monroe?

A. I said the superintendent there had given me some cost figures on a truck operated there.

Q. Then there must be some truck service there?

A. Yes, but I'm not familiar with the operation of freight south of Hamlet. I don't know anything about it. It is not on my Division, and I don't know.

Q. Do you know how a shipment moves from Petersburg to Rockingham?

A. Other than what I gave you before, no, sir.

Q. Do you know your train schedules between Hamlet and Monroe?

A. No, sir.

Q. Mr. Terrell, I believe you testified that freight to these intermediate points between Richmond and Henderson, excluding them, largely originated at Henderson and Richmond?

A. Richmond and Petersburg.

Q. Richmond and Petersburg?

A. Yes.

Q. And do you intend to handle freight originating at Richmond and destined to Petersburg on this truck?

[fol. 818] A. No, sir.

Q. Do you not intend to handle freight originating at Petersburg and destined to McKinney on this truck?

A. Originating at Petersburg destined to McKinney?

Q. Yes, sir.

A. Yes, sir.

Q. You do?

A. Yes.

Mr. Abeles: LCL shipments?

By Mr. Watkins:

Q. LCL shipments and LCL shipments to Bracey, La-Crosse, or Skelton?

A. Yes, sir.

Q. And also freight originating at these points in Virginia, destined to Richmond?

A. Yes, sir.

Q. Also freight originating or destined to Norlina, Wise, Ridgeway, and Manson, and origin or destination at Henderson?

A. Yes, sir.

Q. Have you got any intrastate rights for that service either in Virginia or North Carolina?

A. You mean state rights, is that what you mean?

Q. Yes.

A. No, sir. So far as we know, we have not.

Q. So far as you know, you have no intrastate rights in Virginia or North Carolina?

A. No, sir. Not so far as I know.

[fol. 819] Q. Then so far as this exhibit is concerned it shows tonnage that without a certificate from North Carolina and Virginia, you could not handle on this line?

(The question is read.)

Mr. Abeles: In the absence of it showing how much of this traffic is interstate and intrastate, of course the witness can't answer that question.

Mr. Watkins: It is obvious that this exhibit contains some intrastate, isn't it?

Mr. Abeles: I presume so.

Mr. Watkins: I'm asking the witness. Let him testify instead of you.

Mr. Abeles: All right.

The Witness: What is the question now, I'm sorry?

(The question is read again.)

The Witness: That is my understanding, we could not unless we receive the certificates.

By Mr. Watkins:

Q. Can you estimate the amount of intrastate tonnage that is shown on this exhibit?

A. No, sir, it would be purely a guess if I did.

Q. You have got no way of doing that?

A. Not here, no, sir.

Q. But you do know some intrastate tonnage is shown on the exhibit?

A. Yes, sir. I am quite sure of it, yes, sir.

[fol. 820] Q. Isn't quite a large part of it, because don't most of these towns purchase in Richmond and Petersburg?

A. Yes, sir, down as far as Norlina, yes, sir.

Q. Then don't these North Carolina points usually purchase at Henderson?

A. Yes.

Q. And the intrastate tonnage in here is for considerable volume?

A. I would say so, yes.

Mr. Watkins: I think that is all.

The Chairman: Anything further? We have about 10 minutes more.

Mr. Abeles: I might state for the record that we have pending before the Commission, applications for certificates over the North Carolina portion of this route.

The Witness: In discussing the question of additional transfers which would be involved by the utilization of independent truck lines, there would be additional interchanges involved by the use of independent truck lines.

Redirect examination.

By Mr. Abeles:

Q. Is there a difference between an interchange and a transfer as regards delays and cost of performing the operation, that is interchange with another transportation agency, as compared with a transfer with our own transportation agencies, see what I mean?

[fol. 821] A. Yes, sir.

Mr. Watkins: May I state here that that question should be limited to interchange with motor carrier facilities.

Mr. Abeles: I'm entirely willing. I intended to *limit* it to that.

The Witness: My answer was yes, there was a difference.

By Mr. Abeles:

Q. And what is that difference, if you can answer that briefly?

A. The difference in the transfer to our own truck is that it would be handled by our forces and would be loaded into the truck without any additional records or anything of that kind; where an interchange was involved it would be necessary for each line to check the freight and make records of the way bills and other documents accompanying the shipments as well as the accounting feature with which I'm not entirely familiar with the set up.

Q. With regard to the supervision of employees which would be employed, in utilizing other truck transportation agencies in performing this proposed truck service, Mr. Watkins asked you whether it was any more difficult to supervise employees of independent truck lines than it was

to supervise the employees of other rail transportation agencies. Do we know or do you know the manner of supervising the discharge of the duties of other rail transportation agencies, as compared with our own methods?

[fol. 822] A. The methods are practically standard or practically similar all over the United States, that is on standard Railroads.

Q. Do you know anything about the methods of supervising the discharging of duties by other motor carrier agencies?

A. No, sir.

Q. Now, you stated, Mr. Terrell, that in inaugurating this service you did not have in mind any additional business that might result from the improvement in service which you contemplated, did you not?

A. Yes, sir.

Q. Mr. Watkins asked you whether your cost of conducting truck service included station expenses, traffic expenses and other costs generally characterized as traffic expense and overhead cost. Will there be any additional costs of that nature other than those out-of-pocket costs, directly incurred in operation of this truck, which will result from the establishment of this service?

A. No, sir.

Q. Will we use the same station forces?

A. Yes, that is our intention.

Q. The same records will be kept?

A. Yes, sir.

Q. The same accounting and other operations as though the transportation were by rail?

A. Yes, sir.

[fol. 823] Mr. Abeles: That is all, Mr. Chairman.

Recross examination.

By Mr. Watkins:

Q. You stated you didn't intend to keep any separate accounting record?

A. Of the freight handled by this truck.

Q. If the Interstate Commerce Commission required separate accounting records for motor carrier transportation that would be an additional cost?

A. That would be according to how voluminous the report was. We could take on some. A great deal of work, naturally it would be. Yes, sir.

Q. Have you made any investigation to determined the method of supervision of employees now in effect by common carrier, motor carriers?

A. No, sir.

Q. You don't know anything about the rules of the Commission dealing with that subject or the proposed rules?

A. Only what I have read.

Q. You don't know whether or not the supervision over the employees of a motor carrier in the same as the supervision over rail carriers?

A. No, sir. I don't.

Q. I believe you stated that one of your economies if it could be handled by interchange with your own trucks rather than another motor carrier truck, would be that [fol. 824] the handling of the freight would be by your own force and they would put it in your own truck?

A. Yes, sir.

Q. It would be by the carrier's force if it was put in the truck?

A. Well, I didn't think I stated that because I don't know just what arrangement we would make. I don't know whether we would handle the freight or whether it could handle the freight, and who would load it.

Q. It would be possible to have the same?

A. So far as actual handling of the freight.

Q. If you made such an agreement with the motor carrier?

A. Yes, sir.

Mr. Watkins: That is all.

(Witness excused.)

The Chairman: All right, we will take a recess until two-thirty.

(Whereupon at 12:50 p. m. the hearing adjourned until 2:30 p. m.)

[fol. 825] Afternoon Session

Raleigh, N. C.; June 14, 1937, 2:30 o'clock p. m.

The Chairman: We will come to order, please.

C. D. JONES was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Jones, state your name, residence and occupation.
A. C. D. Jones, LaCrosse, Virginia, merchant.
Q. Mr. Jones, what is your business?
A. General merchandise.
Q. In LaCrosse?
A. Yes, sir.
Q. Will you state what benefit the service which is proposed by the Seaboard in this proceeding, you would receive?
A. Well, we feel like it would help us a lot there because we would get our freight early in the morning, around five o'clock, I think.
Q. Do you now receive less carload shipments by rail?
A. Yes, sir.
Q. And what time do those shipments generally arrive?
A. From 11 to 2 o'clock during the day.
Q. And you will now receive those shipments if the proposed service is authorized at what time?
[fol. 826] A. Around five in the morning.
Q. Is that of importance to you and your customers?
A. Yes, it is.
Q. Why?
A. Lots of time we order things for people and they want them right at once. Getting them this way, of course, we have them in time to use them during the whole day. As it is we can only get them and use them half a day.
Q. Now, for example what are some of the products that you deal in?
A. Of course, this is over with now. One thing we have had was tobacco plants. We have had a great demand for that.
Q. Planters?

A. Planters. Lots of time we have to order machinery, repairs for that machinery, flue casing, cultivators and cultivator steel.

Q. And is it important for your customers to receive shipments of that character as early in the day as possible?

A. Yes, it is.

Mr. Abeles: That is all.

The Chairman: The witness is with you, gentlemen.

Cross-examination.

By Mr. Watkins:

Q. Where do these agricultural implements originate?

A. Mostly at Richmond.

[fol. 827] Q. They come from Richmond?

A. Yes.

Q. Practically, all the movement that you are interested in is between Richmond and LaCrosse?

A. Yes, sir.

Q. You don't buy from other points generally?

A. Well, the most of them what we buy come from Richmond.

Mr. Watkins: That is all.

(Witness excused.)

J. P. Hayes was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Please state your name, residence, and occupation?

A. J. P. Hayes, McKinney, Virginia, with the State Highway Department.

Q. Have you any other business activities?

A. I am connected with the button factory.

Q. At McKinney?

A. Yes. The North American Button Manufacturing Company.

Q. Will you state your position with regard to this application, Mr. Hayes?

A. Well, the way I see it we have right much trouble there in getting those buttons after we manufacture them, shipped

away. They are always delayed by not having the proper [fol. 828] service there.

Q. Are you familiar with the schedule proposed for this truck line?

A. Yes.

Q. That schedule expedites your shipments?

A. I think it would be a great advantage because we are having trouble now getting them out and have to just get them up as far as Petersburg or anyway we can to get them early in the morning.

Q. How do you now get your shipments out?

A. Ship them by a milk truck that leaves the dairy there and goes into Petersburg every day. We ship by truck to Petersburg.

Q. And reship by rail from Petersburg?

A. Yes.

Q. Your shipments are entirely less car load, are they?

A. All outgoing products are less car load.

Q. By use of this truck service your difficulties will be largely removed?

A. Yes.

Mr. Abeles: That is all.

Cross-examination.

By Mr. Watkins:

Q. What is the ultimate destination of these buttons?

A. They are all shipped north of Richmond. North of Richmond, nothing goes south at all.

[fol. 829] Q. This milk truck that handles them to Petersburg are they qualified with the Virginia Commission?

A. Now, you are asking me something I don't know.

Q. You made no investigation of that?

A. No, sir.

Q. Did you ever use truck service out of this point?

A. No, sir.

Q. Do you know whether or not there is any?

A. I don't think there are any trucks that make any deliveries there at all.

Q. Do you know of any that pick up there?

A. No, sir.

Q. Do you ever see Horton Motor Lines through there?

A. I see them through every day, but they don't stop in McKinny.

Q. Have you ever inquired to see whether they would stop?

A. No, sir.

Q. If Horton Motor Lines could pick up at McKinny and deliver at points north of Richmond faster than you can haul it from McKinny to Petersburg on a Milk truck and north there by railroad, which service would you prefer?

A. Well, I would prefer the fastest one.

Q. But you haven't made any inquiry to find out which was the fastest?

A. No, sir.

The Examiner: Do your shipments go beyond the limit of [fol. 830] the state of Virginia?

The Witness: Yes, everything goes beyond the state line.

The Examiner: What principal place?

The Witness: New York and Philadelphia.

(Witness excused.)

W. L. STANLY was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Stanly, please state your name, residence, and occupation?

A. W. L. Stanly, residence Atlanta, Georgia, vice-President of the Seaboard Air Line Railway Company and chief Public Relations officer of the receivers.

Q. Mr. Stanly, have you been closely associated with the development of Auxiliary Truck Transportation Service by the Seaboard?

A. I have.

Q. Will you state the general plan and purpose followed by the railway in that development?

A. In our study of the possibility of the use of highway trucks in connections with the operations of our railroad, we proceeded upon the theory that by land there are three distinct forms of transportation. One, all rail, one all truck, and the third a combination of rail and highway service. In our studies of these matters we have endeavored to [fol. 831] develop this coordination service which I men-

tioned last. We have taken various territories of our railroad and made studies of the possibilities of the use of trucks in those particular territories, in conjunction with our train service. We find that by the partial use of rail service and the partial use of highway service that our main objective can be complemented, that is, expediting the movement of freight which the public sees fit to give to us. Of course, we must handle everything that is offered to us whether it is remunerative or whether we do so at a loss. Now, the principal objection is the expedition of this freight. I should have said the principal objective if the expediting of the movement of this freight. Generally speaking and not referring particularly to this application here, we find that by hauling freight from the principal shipping centers to some convenient central distributing point, by rail, and there delivering it to the truck and that we can expedite materially the movement, as compared to the present movement of that freight solely by rail. There are other things that we accomplish by this, generally speaking. The first is expediting the movement of carload freight to the extent that we relieve our local freight trains of the so-called service, the handling of less than carload shipments at various stations, and the necessity of making stops at those stations, the movement of those trains is speeded up and carload business is handled more expeditiously. Then [fol. 832] in certain instances we have found that by the rearrangements of the schedule of our local freight trains, that instead of operating them in the day time, we can operate them at night, and switch industries at times that will be less inconvenient to the operators of those industries. Generally speaking those are the objectives which we are seeking to obtain.

Q. Those purposes that you have just enumerated are generally speaking applicable, are they, to the proposal here under consideration?

A. In some general particulars. In some they are, because I do not understand that we here propose to operate the local freight train at night. It may be possible that that can be done later on.

Q. In establishing the truck service to which you have referred, is there any purpose or intent on the part of the railway to supplant with them the existing rail service performed by the railway?

A. Absolutely, no. It is unquestionably true that where you have the volume of business to justify the operation of trains that there is no transportation by land, that is as cheap as that by railroad. And for that reason, if for no other, we would not seriously consider the substitution of truck for train service where the volume of business is sufficient to justify the operation of trains.

Q. Now, is it the purpose of the receivers to transport carload shipments by these truck operations?

[fol. 833] A. No, for the simple reason that we could not do it as cheaply as we can do it by rail.

Q. Mr. Stanly, does the Seaboard operate truck service in other states and localities?

A. It does.

Q. Will you describe as fully as possible where those truck services are located and extend?

A. Taking them as near as I recall them in chronological order, we have a service between Hamlet, North Carolina and Monroe, North Carolina, which was established some four or five years ago. On January 1, 1935, we put on two services in Florida, one from Morristown, Florida to Waldo, Florida; and the other from Tampa to Brooksville, Florida. Then we followed or perhaps this may have preceded the two that I have mentioned, the service between Grifton, Florida and Monticello, Florida, a distance of four miles paralleling a branch line railroad that we have between those two points. We then put on a service between Jacksonville, Florida and Wildwood, Florida. We subsequently extended that from Wildwood to Tampa. That, by the way, is the longest operation we have anywhere, being 212 miles long. Then we have one from Fernandino, Florida, to Yulee, Florida, a distance of 12 miles and paralleling another branch line railroad. Another between Rhine and Lyon, Georgia, a distance of, as I recall it, of 58 miles. The [fol. 834] total mileage involved in all those operations is 450 miles.

Q. So the Seaboard has had experience since the inauguration of the Hamlet-Monroe service, in I believe you said 1931?

A. It has been on some four or five years. I don't remember exactly the date, but we have had experience since the inauguration of that service.

Q. Are all the operations which you have mentioned still in service?

A. Yes.

Q. Has the Seaboard ever discontinued the service of any auxiliary truck operations once instituted?

A. Not of this particular character. At one time, we had during the period when we were operating a very limited number of passenger trains, a truck that operated from Norlina to Hamlet, North Carolina, principally for the handling of United States mail.

Q. But so far as concerns truck service carrying general commodities have we ever discontinued the service?

A. We have not.

Q. From your experience and the intimate knowledge of the operations which you have enumerated, in your opinion have they fulfilled the function for which they were established?

A. Undoubtedly.

Q. That purpose being a speedier handling of LCL freight?

A. Yes, sir.

[fol. 835] Q. Now, you said at the outset of your testimony, Mr. Stanly, that one of the primary purposes that the Seaboard has in mind in establishing these auxiliary truck services is to expedite local deliveries and by relieving through trains of the local delivery service, increasing the efficiency of the carload movements, if it is practicable. I'm now referring to the question raised this morning, as to the possibility of determining whether or not these auxiliary truck operations would be financially successful as independent projects, have we any way of determining the exact result from a financial standpoint of these operations?

A. No. It is almost impossible to do it for two reasons. First, in the main, this traffic will be largely handled partially by rail and partially by truck. I might illustrate that by saying that at Richmond, Virginia, in this particular case, we not only handle from that point business that comes to us from Richmond proper, but from connecting lines, the Chesapeake & Ohio, the Richmond-Fredericksburg & Potomac Railroad and the far west on the one side, and from the east on the other. We handle some freight from Florida points, to Petersburg, Virginia; and that, in order to show the delay that is incident to the handling of that LCL freight, moves to Richmond where it is transferred in a car and brought back to Petersburg. If this truck were in

operation, we would take that particular freight, which it would still go to Richmond, we would bring it back to Petersburg by truck and greatly expedite the movement. [fol. 836] In view of all those conditions it is almost impossible to segregate the truck operation from the rail operation and show the benefits financially that would incur from that particular service. After all, as we view it, the truck that we propose to operate is just a part of the railroad. It is another train so to speak, with limited capacity on the highway.

Q. Mr. Stanly, have you information from which you can tell the Board the result of the operations of the Seaboard Air Line System in the year of 1936?

A. I have before me a copy of our annual report for that year.

Q. Will you refer to the income account page three of that report, and state the gross revenues, gross Railway operating revenues, net railway operating income and the gross income from the system in 1936?

A. The gross operating revenues were $38,346,055.37. The net railway operating income was $2,920,582.99. And the gross income arrived at by adding to the net railway operating income, other income, was $3,276,751.23, which was available for the payment of interest on indebtedness.

Q. It there any question from that statement that you have just made of the financial ability of the railway to establish this truck service here under consideration?

A. Absolutely not. We have had not trouble in meeting our operating expenses and taxes. Our difficulty has been [fol. 837] in meeting on our bonded indebtedness.

Q. Are the expenditures authorized from time to time far exceeding that which will be involved in the establishment of the truck service?

A. Oh yes.

Q. Now from your experience with other truck operations conducted by the railway, Mr. Stanly, what have you to say regarding the effect of the highway service rendered by the railway, limited in the manner you have described, upon independent motor carriers operating in the same territory?

A. I have made a study of this situation, in the state of Florida. And I might say here very frankly, that we hope that we may be able to get back some of the business that

truck lines either, certified carriers or private carriers have taken away from us. In Florida, for the years, 1930, to 1935, by the reports of the railroad commission of that state, the earnings of the common carrier truck lines operating in Florida, increased in that five year period 75 per cent, while the earnings of the railroads on strictly Florida business, freight earnings, decreased 33 per cent. Now, answering specifically your question as to the effect that this will have upon competing forms of transportation, I might say that this competition has had very serious effect on us as compared to the time when we once enjoyed a monopoly on transportation. As I stated in answer to another question, [fol. 838] we inaugurated between Morristown, Florida, and Waldo, Florida, and between Tampa and Brooksfield, Florida, on January 1, 1935, two trucks lines. The reports of the Florida Railroad Commission show that the earnings of our three competitors in each of those territories common carrier truck lines, increased both in 1935 and 1936.

Q. You conclude from that, I suppose, that there has been no prejudicial effect upon these independent truck lines from the establishment of our own service?

A. There are a good many reasons for that. The figures which I gave you demonstrated in that particular instance that they have not. But two of the reasons that I might mention are these. Generally, speaking, truck rates are lower than rail rates. We are asking for the authority in this petition to change rail rates to the extent that they may be lower or our competitor will still have advantage over us, another reason is that the competing truck lines can take short cuts so far as distance is concerned. And I will illustrate that by referring, it doesn't apply to this particular application; but it is illustrative of what I have in mind, take the Seaboard operating between Raleigh, North Carolina, and Wilmington, North Carolina. We have got to go through Hamlet. We have got to take the long route, two sides of the triangle while the competing truck line operates cross country from Raleigh to Wilmington. They would still have that advantage of us wherever the direct route is [fol. 839] in favor of the truck line.

Q. Do we in any instance digress from our rail route where there is a highway paralleling those routes?

A. Our policy has been to use the highway nearest to our railroad and which is generally used by the public in going from one community to another served by our railroad.

Q. And in instance where we traverse communities or towns which are not served by the railroad what is our practice?

A. Well, we will not attempt to do any business there. We only expect to do business where we have authority as a railroad to do business.

Q. Do we operate through such communities and towns with closed doors?

A. Absolutely. We won't stop at a country store and do business on the highway country store that was between two of our stations. It is only at those points where our rail tariffs authorize us to do business.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Any questions, gentlemen?

Cross-examination.

By Mr. Watkins:

Q. Mr. Stanly, you have been speaking of the general policy of the Seaboard Railroad, is it not the general policy of the Seaboard to parallel practically all of their rail lines with truck service?

A. No, sir. It is not. We are only taking, Mr. Watkins, particular sections of the railroad where we thing by this [fol. 840] coordinated service we can expedite the movement of LCL freight and each case represents a study in and of itself.

Q. Is it not true that you have prepared and filed with the ICC, eight applications for truck service paralleling your rail lines?

Mr. Abeles: I object for the same reasons.

The Chairman: The objection is sustained. That part of it alone is not objectionable.

By Mr. Watkins:

Q. This is a little different situation now. Mr. Stanly, chief Public Relations Officer of this railroad has testified to the policy of this railroad. I think as long as he testified to that policy it is perfectly correct for me to be allowed, for me to go into and test how far that policy has been carried out.

Mr. Abeles: Only insofar as it applies to this particular operation which is before the Board in this proceeding.

Mr. Watkins: In his direct testimony, he referred generally to truck service at other points on his route. He referred specifically to movements between Raleigh and Wilmington.

The Witness: Not by truck.

The Chairman: He did not testify to any proposed truck service or as to his application for such service between Hamlet and Wilmington. I think we had better confine ourselves, gentlemen, to this case. You can ask him if he proposes any more. That is a matter of record, further than [fol. 841] that I think we should not go.

Mr. Watkins: That is why I asked if he had eight applications on file.

The Chairman: I will admit that. Objection overruled, and exceptions.

Mr. Able: I won't even except to that.

Mr. Watkins: Will you answer that question?

The Witness: We have on file with the ICC now, seven or eight additional applications.

By Mr. Watkins:

Q. And generally covering what area?

Mr. Abeles: There is the limit, I think.

The Chairman: Objection sustained.

Mr. Watkins: May I have an exception to that?

The Chairman: Exception.

By Mr. Watkins:

Q. Did you not advocate the passage of a law in the state of Georgia, which if passed, would have allowed railroads to have inaugurated service paralleling their lines without the issue of convenience and necessity being passed on?

M. Abeles: I object to that.

The Chairman: Objection, sustained, exception.

Mr. Abeles: I am objecting to *ti*, not because I have the slightest objection to Mr. Stanly's furnishing that information, but I can't see any possible relevancy to it.

The Chairman: That can't aid us in deciding this case. [fol. 842] Mr. Watkins: I think it will aid in finding out the general policy of this railroad.

The Chairman: I think, gentlemen, the only question before us is whether or not there is public convenience and necessity shown for the granting of this franchise.

Mr. Watkins: Mr. Commissioner, I didn't open this question of general policy.

The Chairman: And fitness, willingness, and ability to perform the duties required of the franchise operator if the franchise is given.

By Mr. Watkins:

Q. You now have a truck service between Hamlet and Monroe?

A. Yes, sir.

Q. What is the schedule movement of that?

A. I think, I'm not positive as to these figures, Mr. Watkins, that leaves Hamlet early in the morning probably around 6:45, a. m., gets to Monroe around 9:40 a. m., leaves Monroe at 10:30 a. m., and arives at Hamlet at about 2:00 o'clock. I don't think those figures are exactly correct, but they are approximately so.

Q. How many trucks do you operate on that run?

A. I don't think——

Mr. Abeles: I didn't object, Mr. Chairman, to the first question because I wanted to find out if possible just what he has in mind, but there is obviously no connection between [fol. 843] the Hamlet and Monroe operation and the proposal here under consideration which terminates at Henderson.

The Chairman: It seems to me there might be some remote pertinency. I'll let him answer that.

The Witness: If there is more than one, I do not know it.

By Mr. Watkins:

Q. Has there be- any change in the service on that line since the inaugurating?

A. I can't answer that. Do you mean in the last four or five years?

Q. Yes.

A. I don't know. I just can't answer that.

Q. I believe you signed personally these applications that were filed with the ICC?

A. Yes, sir.

Q. And I believe that these applications are "Extensions of present service"?

A. I don't know what language you refer to.

Mr. Abeles: Are you speaking now of the present application?

Mr. Watkins: Of the present applications, yes, sir, extensions of operations. Then I refer you to your application Docket MC 86,687 and ask you why it was that you did not refer to that as an extension, but refer to that as a new operation?

Mr. Abeles: Same objections, Mr. Chairman.

[fol. 844] The Chairman: In what operation?

Mr. Watkins: MC 86,687.

The Chairman: Is that the one before us?

Mr. Abeles: No, sir.

The Chairman: Objection sustained.

Mr. Watkins: The line of questioning here has an entirely different point of view now. The purpose of it is this: He testified that it is the extension of rail service. Now, he treated another application in this series differently, and I want the record to show why he treats them differently.

The Chairman: Now, Mr. Watkins, don't you think we ought to take that up when we get to that application and not confust it with this one? This application states an extension of rail service, and this is the one we are hearing. Now if that is objectionalbe in the other case, that is the time that objection should be heard and considered.

Mr. Watkins: What I'm after is trying to find out why. My position is this, Mr. Commissioner, I believe that the reason this was done is because this application, through other pending applications, does tie up with his present operations between Monroe and Hamlet; and I believe that is the purpose of this and t-eating it this way, because all of those were considered as extensions of that operation between Monroe and Hamlet. The reason for the treat-

[fol. 845] ment of the one in South Carolina was referred to differently was because it didn't physically tie up with the rest of these applications but missed it by six miles.

The Chairman: That gets back to the main question involved in your motion this morning to show the purpose of the applicant in having all these segments, form one continuous service through the state. We don't see any

reason why we should desert the ruling that we gave this morning on your motion.

Mr. Watknis: I want exceptions noted.

The Chairman: Yes, sir, exceptions.

(Discussion off record).

The Examiner: On the record. Mr. Stanly, none of these operations which you have just testified in regard to having signed the applications therefore have yet been begun, have they?

The Witness: Not a single one of them.

The Examiner: It is not your intention to start one any sooner than another.

The Witness: Not a particle. I think the record will indicate that the word extension there was not used in respect to these services of the application that I have just looked at. If that did appear it would have reference to extension or auxiliary service or railroad service.

(Discussion off record).

Mr. Abeles: I notice that the Commission's formal noti- [fol. 846] fication setting this application for hearing does characterize it as an extension of operations. But by reference to the application itself, it will be noted that it is designated as a request for authority to institute an operation at a time subsequent to October 15, 1935, and the application did not either consider or designate this application as an extension of operation. I think that clarifies the record.

Mr. Watkins: Now, I want to say for the record, that the form upon which the application was filed is the same as was used for extension of operation not as used for the beginning of a new operation. So the applicant must have said something in its application for the commission to determine some of these applications were extensions while one of them was a new operation.

Mr. Abeles: So if the Commission did so, it was without the knowledge of the applicant and without concurrence in that application.

By Mr. Watkins:

Q. Mr. Stanley, I believe you testified that on this particular operation you were not going to discontinue your freight rail service or change it any way?

A. So far as we now know.

Q. So far as you now know. And you are going to handle carload traffic by your rail service?

A. Yes.

Q. So it will be necessary to stop at these points to set [fol. 847] off carload traffic?

A. Oh, no. Many of these points will be no carload traffic.

Q. To which?

A. On these smaller stations. I have a list of them here.

Mr. Abeles: I think Mr. Terrell identified those this morning.

The Witness: I wouldn't undertake to say. There never has been any carload traffic to any one of these points. You take Grandy, Skelton, Bracey, and Wise, Ridgeway, Manson and Greystone. I doubt if there would be a carload of business there, once a year, if then, that is moving into these places. And to those points there has hardly been a carload of LCL business in 11 months. The sad part of it is if only one little package, weighing five pounds, comes, we have got to stop the train there to put it off.

By Mr. Watkins:

Q. Isn't there a rock quarry at Greystone?

A. Yes, sir.

Q. They move carloads of rock out of there?

A. Yes, we move stone out of there.

Q. I believe you stated or testified that it was not in contemplation the handling of business from and to points on this route, from and to points on other routes that you have asked for the privilege of operating, entirely by motor truck?

A. It would be the exception to the rule.

Q. Are you willing to have your certificate limited as to [fol. 848] prevent that?

A. I am not.

Q. Would you be willing to have your certificate limited so that it would require that this traffic move at least partly by rail?

A. I would not. Because if we handle for instance a shipment from Ridgeway to Manson, a distance of just a few miles, there would be no earthly way to handle that partly by train and partly by truck to start with. And in

the second place, if we did do it we have to have a back-haul on it to bring about any such result.

Q. As between this application and other applications pending, would you be willing to say that your application be limited so as not to allow you to interchange from one branch to another motor carrier branch?

Mr. Abeles: I object as the matter is now involving proceedings not before this Board.

Mr. Watkins: I'm trying to find out what his intention is with connection with this operation, in connection with other operations as applied for.

The Chairman: Operations involved in other applications?

Mr. Watkins: Yes, sir.

The Chairman: I believe I will let him say whether or not he could do that.

Mr. Abeles: Mr. Chairman, I defer, of course, to your ruling. It seems to me we are again becoming involved in [fol. 849] operations which are not before the Board in this proceeding at all.

The Chairman: Not any operations, he may have some others in some sections. That was a general section. I think he can answer it.

The Witness: I certainly would object. I illustrate the ground for my objection by using the following imaginary situation. Suppose that we had a certificate authorizing us to operate from Hamlet to Raleigh. One authorizing us to operate from Raleigh to Henderson, and that we got a shipment at Cary going to Wake Forest, and it moved into Raleigh by truck. I certainly would want the privilege of handling that shipment from Raleigh to Wake Forest by truck.

By Mr. Watkins:

Q. And you would want that privilege because it would be the most economical way of handling the traffic?

A. No, that fits into the general scheme of coordinating rail and truck service. I might say that in my opinion, a very large percentage of the business that will be handled upon this particular route will be moved partly by rail and part-y by truck. You take the business that comes from Portsmouth, Virginia, from the boat lines that would move down to Henderson by truck to these various points.

Taking the business that comes into us from connecting lines at Richmond, that would be handled by rail up to that [fol. 850] point. And then if it came south of Henderson, it would be handled by train to Henderson. Take the business that comes from all over the United States, use a railroad term that breaks bulk at Hamlet, North Carolina, it would be loaded from Hamlet to Henderson and moved by rail that way then the truck would take it and distribute it, the major part of this business is going to be business that would move partly by rail and partly by truck. There will be isolated cases where from station to station you have a package that will move exclusively by truck.

Q. Then if it is more economical to the railroad to move it all by truck rather than partly by truck and partly by train, it would be your intention to use the all truck service?

A. It is not more economical to move it all by truck. Answering that, I assume that it is not more economical to move it all by truck; except in those isolated cases we would never substitute truck for train service to handle an appreciable amount of business.

Q. Where it does become more economical to use truck service between any points where you might have the right, you intend to do so?

A. If we have rearranged our train schedules between Hamlet and Raleigh as to have a truck in there, and rearranged them north of Raleigh as to have a truck in there, we certainly wouldn't want to use both a train and a truck to stop at Cary, to pick up a shipment for Wake Forest.

Q. If by the use of all truck service you could save 24 [fol. 851] hours or more over the time elapsed by all rail or joint rail and truck service, which service would you use?

A. Well, there would be another factor that would enter into that. That would be the question of the rail service that you had. But I repeat the answer I made to you awhile ago that in my opinion, there is nothing worth while either in the public interest or from the standpoint of the railroad, to substitute truck entirely for rail service. And we have no intention of doing it.

Q. Except in certain instances?

A. Except in instances where we can expedite the movement of freight; and largely in those cases where the volume is exceedingly small.

Q. I believe you stated it would be impossible to ever determine whether a motor carrier operation of a rail line was profitable?

A. I said it would be very difficult to segregate under the schemes of coordinating service, the earnings and expenses of both of those services. That is what I said would require a great deal of labor and the use of some arbritary figures.

Q. Do you ever attempt to figure the earning capacity of any branch of your railroad?

A. What?

Q. Any branch of your railroad, any division or branch?

A. Oh, in a very general way.

Q. Well, take your Chesterfield-Lancaster operation, that is a subsidiary line. Can you figure whether or not that [fol. 852] operation is profitable or not?

A. Yes. Because there we keep separate accounts for that subsidiary line as though it were an independent railroad.

Q. Would it not be possible to keep similar accounts for this motor truck operation as you do for the Chesterfield-Lancaster operation?

A. I don't think so.

Q. Why?

A. Because we are going to handle it partly by rail and partly by truck.

Q. You handle shipments from Raleigh to Pageland, partly by the Seaboard system and the Chesterfield-Lancaster road, have you not?

A. That is just the same as if we had shipments going from Raleigh, North Carolina, to New York. Each railroad keeps records of its particular earnings.

Q. The through rate is prorated?

A. The through rate is prorated.

Q. A mileage?

A. I don't know on some basis.

Q. Would it not be possible to prorate the rates on this traffic as to the part of the traffic that moves by truck and as to the part of the haul moving by rail?

A. I don't say it wouldn't be impossible. I say it would not be practicable. It would be a very difficult thing to do. [fol. 853] Q. Would it be any more difficult than doing it on the Chesterfield-Lancaster operation?

A. Absolutely.

Q. How?

A. Because that is a separately operated railroad. The truck we are going to operate is a part of the facilities of the Seaboard Air Line Railway just as a box car and engine of that railway is part of the facilities.

Q. Under this proposed system you still intend to handle the package car by rail service to Richmond and Petersburg?

A. I think so. I'm not positive as to that; wherever we have a sufficient volume of freight to handle it by rail, we are going to do that.

Q. Even though it takes longer?

A. Well, even if it takes slightly longer, in that particular case.

Q. 24 hours?

A. No, we won't do it then. We won't take 24 hours.

Q. By how many million dollars did the Seaboard Air Line fail to pay their fixed charges in 1935?

A. Mr. Abeles: One moment before you answer that question. I have no objection to his stating, but it is in the exhibit which is filed and I don't think it would expedite this proceeding.

The Examiner: By the way you didn't offer that.

[fol. 854] Mr. Abeles: I beg your pardon.

The Chairman: He can answer that.

The Witness: In 1936, the Seaboard lacked $6,097,461.95 of having sufficient money, after the payment of its operating expenses and taxes, to meet the interest on its bonded indebtedness, exclusively of the interest on adjustment mortgage bonds.

By Mr. Watkins:

Q. What is the relationship of your gross operating revenue and your net operating revenue?

A. You mean the ratio?

Q. Yes.

(Discussion off record.)

The Witness: The operating ratio of the Seaboard in 1936, was 82.98. In other words we had about 18¢ left out of every dollar after paying operating expenses and taxes to meet interest on bonded indebtedness.

Mr. Abeles: Might I object at that point and explain it for the record. That is not what Mr. Watkins asked. That operating ratio figure does not represent the ratio between gross operating revenues and net operating revenues, I don't think. It represents the relationship between gross operating revenues and operating expenses. I simply wanted to clarify that for the record.

[fol. 855] The Witness: The figure I gave you is to be found on page 27 of the annual report for 1936.

By Mr. Watkins:

Q. Now, let's go down to Florida where it is cooler. This increase in business that you found out from the reports to the Florida commission, that included all the business of those carriers, did it not?

A. That is right.

Q. And the figure that you have compared from the Seaboard railroad included only the strictly Florida business?

A. Yes.

Q. The truck figure included interstate traffic as well as intrastate traffic?

A. I might explain it this way, Mr. Watkins. You take truck line A that operates in Florida and also in Georgia, its earnings for its entire line were shown; but you would also find that if you compared those earnings to the earnings of all of the railroads operating in Florida, that there had been a substantial decrease in the system earnings of those railroads during the same period.

Q. But the comparison doesn't show the effect on the motor carrier business directly affected by your motor carrier operations?

A. In other words, I could make no comparison of their earnings in the territory through which we had an operation. I could only take their total earnings and compare [fol. 856] them with our total earnings.

Q. Now, today you have an operation by truck all the way from Jacksonville to Tampa?

A. Yes.

Q. And you don't know the effect of that on the operating revenues of the motor carriers operating from Tampa to Jacksonville?

A. That has only been in operation less than a year. There are no figures available.

Q. And five out of the six operations that you testified to in Florida, were begun January 1, 1935, or later?

A. Perhaps that is true. I have not counted them up.

Mr. Abeles: At this point, I should like to offer in evidence the annual report of the Seaboard Air Line Railway and its receivers for the fiscal year ending December 31, 1936.

The Chairman: Mr. Abeles, the Examiner called my attention to the fact that your first exhibit wasn't received in evidence. We will receive both exhibits No. 1 and No. 2 in evidence at this time.

(Exhibit No. 1 and No. 2, Witness Stanley, received in evidence.)

By Mr. Watkins:

Q. Mr. Stanly, with regard to the purposes, which you described generally that the railroad has in mind in establishing these truck services, have you anything else to say?

[fol. 857] A. I'm stating my personal opinion, now, whatever it may be worth. The railroads today are in competition not merely with the certified common carrier truck lines, operating between fixed termini and over definite routes, but they are already in competition with the contract carrier, the for hire vehicle, and trucks operated by merchants. It is my opinion that as a result of this expedited less than car load freight service which we are seeking authority to establish, that some merchants if not many of them, will discontinue, the use of their private trucks in territories that are served by the trucks from the railroads.

Redirect examination.

By Mr. Abeles:

Q. From that source do we hope through the establishment of these auxiliary services to regain traffic which we could not now carry?

A. Yes.

Q. Will that affect the certificated truck operators in any way?

A. No.

Q. Do they carry any of that traffic now?

A. Of course, they do not carry the traffic handled by the merchant in his own truck and by the contract carriers?

Q. Now, Mr. Stanly, Mr. Watkins questioned you at some length with regard to the purpose which we might have had in mind in establishing independent through truck service. Can you state from your own knowledge as to whether the several truck operations for which the applications you [fol. 858] refer to are now pending before the ICC, were scheduled in such a way as to articulate within themselves as to make it a practical proposition to operate them as through service in conjunction with each other?

A. No such objective was in mind as I stated in the beginning of my testimony. Each territory was taken and studied independent of every other territory. And I might state that if we had a truck service from Columbia to Richmond, several truck services in that territory, that we would be, for want of better words, I would say assinine to operate a truck from Columbia to Richmond to handle that business when we have got a car moving from Columbia to Richmond every day by rail.

Q. That would be a wasteful procedure?

A. Yes, sir. We would be fit subjects for the lunatic asylum.

Q. Mr. Watkins asked whether we were willing to limit our applications to service rendered partly by rail and partly by highway. So far as these several applications for service are concerned, in that connection, I want to ask you this. If we found that in the exceptional circumstances to which you refer that by transporting a less car load shipment from one section to another, we could save a considerable lot of time in the delivery to the consignee. Would we be criticized if we did not take advantage of that benefit to the shipper?

A. I don't know whether we would be criticized or not, but in the public interest having in mind the speeding up of freight, I think that we could be justly criticized. And I [fol. 859] tried to state in my testimony awhile ago that those would be exceptional cases and not the rule.

Q. Now, Mr. Watkins seemed to have some difficulty in understanding why we do determine the net results of operations of a subsidiary line such as the Chesterfield-Lancaster, and could not determine the net operating results of a coordinated truck service such as we propose here. In

order to clarify the record, let me ask you this. When a shipment is made from a point on the Chesterfield-Lancaster to a point on the Seaboard, is there a definite revenue division or rate division between those two lines?

A. Yes, there is.

Q. Is that made by an agreement or by order of the regulatory authority?

A. I'm not sure about that, Mr. Abeles, but my opinion is that it is made by the regulatory authority.

Q. Let me interrupt. I didn't mean to ask you which one it was made, but simply whether those divisions were fixed either by agreement or by regulation?

A. Absolutely.

Q. Is that the reason then why the revenue accruing to the Chesterfield and Lancaster can be readily computed?

A. You can readily determine through that apportionment of gross earnings the revenue between the Seaboard and the Chesterfield-Lancaster. Of course, the Chesterfield-Lancaster have its own expenses that are separate just as the expenses of the Seaboard Air Line Railway are [fol. 860] kept separate.

In other words as I understand you the two properties are operated complete and separately distinct from each other in the accounting and auditing department?

A. Absolutely.

Q. As regards this coordinated truck service the revenues are emerged and not ear-marked with respect to the respective forms of service?

A. The earnings of the truck line are for all accounting purposes the earnings of the railroad, and there is no record kep- separately of these earnings.

Q. I think you stated that it would be an extremely laborious task to make that separation?

A. It would not only be a laborious task, but a very expensive one and as I see it an unnecessary one.

Mr. Abeles: That is all, Mr. Chairman.

The Witness: I might add this if I may, under conditions as they exist at this time, we will set up a certain operation by rail and a certain operation by truck. It is easily conceivable to me that in the course of time conditions might change. That instead of hauling freight from Richmond, for instance to Henderson, that we might have a car that we set out at some intermediate point and that the

truck would take it from and distribute it to the smaller stations. All of those things depend upon conditions as they may exist from month to month and from time to [fol. 861] time.

Mr. Abeles: That is all, Mr. Chairman.

Recross examination.

By Mr. Watkins:

Q. And if conditions justified it in the future you might want to change these schedules you now propose?

A. Well, we would have to come to the Commission for that authority. We couldn't do it without asking for that authority.

Q. If conditions changed, you might handle more and more freight by all truck service rather than by coordinated?

A. I hope we will handle quite a bit more freight by coordinated truck service.

Q. By substituting truck service——

Mr. Abeles: I object to that substituted truck service. That is foreign to what we hope to do.

Mr. Watkins: I have never been able to see the difference between coordinated service and substituted service.

The Witness: In coordinated service, the major part of your service has to be handled partly by rail and partly by truck. Substituted service is where we discontinue the train, as I see it and put a truck on. We have no idea of doing that.

By Mr. Watkins:

Q. If you handle any freight entirely by truck as far as that truck is concerned it would be substituted service, would it not?

A. Depends on your revenues.

[fol. 862] Mr. Chairman: It might be an additional service. Is there any further testimony?

Mr. Watkins: Mr. Stanly, opened up a nice subject of testimony here a few minutes age when he testified that in these various applications there was no authority of coordination. Now, your operation from Henderson to Rich-

mond propose to leave at 8:00 o'clock a. m., in the morning, do you not?

The Witness: Yes, sir.

By Mr. Watkins:

Q. You leave Richmond at 12:01 a. m.?

A. Leave Henderson for Richmond at 7:00 in the morning.

Q. And you propose a truck service from Raleigh to Henderson arriving in Henderson at 5:00 a. m. in the morning?

Mr. Abeles: Just a moment, same objections there, Mr. Chairman. I might explain that my questions with regard to the purpose in establishing through service, were directed at the Hamlet-Monroe operation, which Mr. Watkins injected into his cross-examination.

The Chairman: One thing about it your witness sort of opened the door there as to whether or not the services were cordinated. He said the services were not coordinated.

Mr. Abeles: Simply for the purpose of refuting any implication which might arise from the question which was asked by Mr. Watkins, which you permitted him to ask as to whether or not there were pending before the Interstate Commerce commission, 7 applications.

[fol. 863] The Chairman: Yes, sir.

Mr. Abeles: As to operating details of those operations you excluded all questioning. That was the sole purpose of my questioning Mr. Stanly with regard to the possibility of establishing through service.

Mr. Watkins: On direct examination Mr. Stanly testified that there was no intention in connection with all eight of these applications to coordinate the service of them. Now I think I should be allowed to show the possibility of coordination from the face of the application.

Mr. Abeles: The face of which applications.

Mr. Watkins: All of them.

Mr. Abeles: I object to that.

The Chairman: I'll let you show whether the schedules in this application are coordinated with the schedules at Henderson in the other application if it so shows.

Mr. Abeles: The Henderson-Raleigh application?

The Chairman: Yes. No further than that. I think that would be going far enough.

Mr. Abele: All right. I have no objections.

Mr. Watkins: That was what this particular question was directed towards in this case.

The Chairman: All right.

By Mr. Watkins:

Q. Are you not proposing a service leaving Raleigh, North Carolina, at 1:30 a. m., and arriving in Henderson [fol. 864] at 5:00 a. m.?

A. That is correct, in another application.

Q. And proposing a service here leaving Henderson at 7:00 a. m. and arriving at Richmond at 4:00 p. m.?

A. That is correct.

Q. Thus a shipment could leave Raleigh at 1:30 a. m. and arrive in Richmond at 4:00 p. m.?

A. Yes, sir.

Q. By using truck service? That would be physically possible?

A. Yes, sir.

Q. Now, how does that time compare with your present rail service between Raleigh and Richmond?

A. I haven't the schedule of our train from Raleigh to Richmond, but——

(Mr. Terrell hands him one.) (Refers to time table handed him by the counsel.)

The Witness: Under our Rail service we would leave Raleigh on train No. 8 at 9:20 a. m., arrive at Richmond at 5:00 o'clock a. m.

By Mr. Watkins:

Q. Take Wake Forest to Richmond?

A. The train leaves Wake Forest at 8:25 a. m., arrives at Henderson at 1:50 p. m., on Tuesdays, Thursdays and Saturdays. In any event it would be loaded into a car at Henderson and moved in the train that night to Richmond. On the alternate days it would move from Wake Forest [fol. 865] to Raleigh and be moved in a train leaving here at 9:25.

Q. Then your service by truck from Wake Forest to Richmond would be very much shorter in time element than it is by rail today if it moved all by truck?

A. It would be slightly shorter, yes.

Q. And the purpose of these applications is to expedite the movement of LCL traffic?

A. To expedite the movement of LCL traffic, but I repeat emphatically with no intention of coordinating the schedules between these separate regions. You might if you would take the return movement between Richmond and Henderson. It leaves Richmond at 12:01 a. m., arrives at Henderson at 8:00 o'clock a. m. which the truck for Raleigh would leave Henderson at six o'clock a. m. two hours before the truck from Richmond arrived. It is possible you might take these figures in some instances and show it might be possible to have continuous truck movement. I still repeat that it was not our objective when we sought to have authority to obtain authority in establishing these services.

(Discussion off record.)

Mr. Watkins: I understand the Chairman has ruled, I can not go into other illustrations tying up other of these schedules.

The Chairman: They are too remote from this one unless we were considering them all together. You have shown there is a connection one part of the day and not in another. [fol. 866] Mr. Abeles: In one direction and not in another?

The Chairman: Northbound direction, but not the southbound.

Mr. Watkins: I want to note an exception to that ruling.

The Chairman: All right.

Mr. Watkins: I presume, Mr. Stanly, by this program of coordinated truck and rail service and you refer to, you desire to attract additional tonnage to the rail carriers?

The Witness: We hope very much that our improved service will result in our getting more business.

By Mr. Watkins:

Q. And that additional business will be diverted from some other transportation service?

A. We will just be getting back that which was taken away from us.

Q. Which is now being handled by other transportation agencies?

A. Well, by many transportation agencies, not necessarily by certified carriers. As a matter of fact it is my personal opinion that a great deal more business is moving by private trucks and contract carriers than by the certified carriers. That is just my personal opinion.

Q. Let's get down to this particular operation. How many of the industries along your line there have their private trucking services?

A. I couldn't give you the number. If you go to any wholesale center of importance, you will find that quite a few of the merchants are operating their own trucks. I [fol. 867] couldn't give you the number from Richmond-Petersburg, from Henderson, I just know that generally speaking that is true. Specially, I have that information as to Atlanta, Mr. Watkins.

Q. We are talking about Richmond and Raleigh now?

A. I say I couldn't give you specifically how many merchants and trucks.

Q. Mr. C. D. Jones, a merchant, testified here in behalf of the Seaboard, did he not?

A. Yes.

Q. He testified he purchased his commodities from Richmond and that they moved in rail service?

A. Yes.

Q. So that is one merchant on this branch who has not got trucks?

A. He is not a wholesaler; he is a retailer at LaCrosse. The man using two trucks to deliver to him is a wholesaler somewhere.

Q. Can you name any person or merchant on any of these points which you speak of who gets the traffic by this movement?

A. No, I couldn't mention the name of a single merchant because I have not sought to develop that information. From my general knowledge, those trucks are in general use in all central wholesale shipping points.

Q. But if 98 per cent of the traffic, LCL traffic, moving between these points involved in this application is moving by certified motor carriers you would expect to divert [fol. 868] some of it to your line?

A. We hope we would be able to get some of that business which I said awhile ago we had lost to them.

Q. Then you disagree with Mr. Terrell?

A. I certainly do. I think though in justice to Mr. Terrell I should say that it is my understanding that when Mr. Terrell worked out these schedules he did it as an operating man rather than a traffic man.

(Discussion off record.)

Mr. Watkins: That is all.

The Examiner: As a matter of sound operating policy, if on this line, offered by this application, the demands of traffic should be sufficient to justify or require the operation of, say six trucks in each direction, on six schedules, it would be sound operating policy, if you were authorized to operate them to use that many, would it?

The Witness: Yes, sir.

The Examiner: Then the matters of schedules or the frequency of service are matters which are subject to change dependent upon the amount of this particular kind of traffic you propose to handle by truck, is that true?

The Witness: Subject to changing conditions. I might say this, if I may be permitted. Of course, the Railroad could put on a train and run it every hour with two or three cars which would be a prohibitive operation so far as expense is concerned, because we do not have a sufficient [fol. 869] amount of business, volume of business to justify the operation of those trains. Now, in view of that we are seeking this coordinated service.

Mr. Abeles: In connection with Mr. Watkins' development of the fact that the schedule between Raleigh and Richmond permitted a through truck service beginning at Raleigh or leaving Raleigh at 1:30 a. m. and arriving at Richmond at 4:00 p. m., in the afternoon, you pointed out that our local train, our through train, No. 88, left Raleigh at 9:20 p. m. and arrived at Richmond at 5:00 a. m.; with those two schedules before you, would we ship a less carload shipment consigned from Raleigh to Richmond by the truck or the train?

The Witness: It would unquestionably go by the train regardless of the truck service as I tried to point out in the beginning. We have a car from Raleigh to Richmond every day. We are going to move this business between those two points, Raleigh and Richmond. Mr. Watkins asked me about Wake Forest, a small station between here

and Henderson and I stated to him what would possibly occur under those conditions.

Mr. Abeles: But where we have train service between two different or given points, and no inherent advantage would result from the use of the truck in preference to the train, do I understand you to say that we will continue to use the train service?

The Witness: I tried to make that very clear, that we [fol. 870] expected to use train service where we could accomplish the same purposes as by the use of truck services.

Mr. Abeles: Even though the truck schedules would permit strictly the same service by highway as we perform by train.

Mr. Watkins: Do I understand your applications are limited to these schedules alone?

The Witness: You mean our truck?

Mr. Watkins: Yes, sir.

The Witness: Yes.

Mr. Watkins: And that you don't contemplate changing these schedules without going back to the Commission?

The Witness: I don't think we would have a right to do it under the law. That is my understanding.

Mr. Watkins: That is your understanding and your application is filed with that understanding?

The Witness: I think we have a right to put on additional trucks and we can change our train schedules.

Mr. Watkins: You don't think you could change your truck schedules?

The Witness: My understanding of the statute is we have to get authority to put on additional schedules. That we may run as many trucks as we see fit on a strict schedule, but that we can't put on different schedules without the authority of the Commission. That is my understanding of the law. I may be wrong.

[fol. 871] Mr. Watkins: You couldn't have seven trucks all leaving a given point at the same time, could you?

The Chairman: The same schedule time, you mean?

The Witness: They all couldn't be on the same spot at the same moment. There could be a schedule out of the depot the same time and run one after the other.

(Discussion off record).

The Witness: They are all on the same schedule but they all couldn't leave on the same track at the same time.

Mr. Abeles: That is all.

Mr. Watkins: That is all.

(Witness excused).

The Chairman: Have you any other testimony, Mr. Abeles?

Mr. Abeles: Mr. Chairman, we have closed.

The Chairman: All right, Mr. Watkins, if you have one witness now you think you can get through in about half an hour?

Mr. Watkins: I have two witnesses I'm very anxious to get through this afternoon. Mr. Koonce.

R. S. Koonce was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Koonce, with what company are you connected?

A. The Motor Transit Company.

Q. What type of operator is that?

[fol. 872] A. Common carrier type operator.

Q. By Motor Carrier?

A. That's right.

Q. What territory do you operate in?

A. We operate in Piedmont, North Carolina and as far north as Richmond. And Piedmont, North Carolina, I mean the central part of North Carolina over U. S. No. 1, from Richmond south through Raleigh, and branch off of Henderson to Oxford, branching off at Henderson, through Durham, Greensboro, Winston-Salem, Asheboro, Sanford, and Fayetteville, and intermediate points of course. They are the principal ones.

Q. Do you go into Charlotte?

A. We do not go into Charlotte.

The Examiner: Is Raleigh your southern termini?

The Witness: Fayetteville. We operate Fayetteville, which is more or less southeast from here.

By Mr. Watkins:

Q. What is the southernmost point on the U. S. highway that you use?

A. Sanford.

Q. Have you got intrastate rights over those routes?

A. Yes, sir.

Q. And have you applied—when did you gain this operation?

A. I might state in answer to that that we do not have intrastate rights in Virginia. We have interstate right.

Q. And when did you begin this operation?

[fol. 873] A. 1931, that is to Richmond. We started in North Carolina in 1927, the intrastate franchises, but our operation to Richmond from Raleigh started in 1931.

Q. And have you filed application with the ICC to cover these rights?

A. Yes.

Q. Has there been any action on your application as yet?

A. No.

Q. Now, you testified that you operate between Raleigh and Richmond?

A. Yes.

Q. And that you operate between Henderson and Richmond, do you not?

A. Yes.

Q. Over what road?

A. Over U. S. No. 1.

Q. Did you serve all points, intermediate, between Henderson and Richmond?

A. Yes.

Q. What type of service do you have in that territory?

A. We have an average of five trucks per day north of Henderson arranging in leaving time from Henderson from 6:30 to 1:00, 6:30 a.m., until 1:00 p.m. And other return service our first truck is scheduled to leave Richmond about 2:30.

Q. Two-thirty a.m.?

A. Two-thirty p.m.

[fol. 874] A. And four other trucks leaving Richmond from five to eight in the evening.

Q. And all of those trucks could handle business to all these intermediate points?

A. Yes.

The Chairman: They could not on your return trip?

The Witness: The return trip at night.

The Chairman; You can not handle any business from Richmond to any points in Virginia?

The Witness: We are not permitted to handle shipments in Virginia from Richmond anyway. We can handle interstate points like Wise, North Carolina, and Petersburg, by early morning truck out of Henderson. That makes local deliveries beyond Wise, up to Petersburg. And we have local delivery service in Petersburg.

The Chairman: But you cannot take anything on beyond Wise, from there to Richmond?

The Witness: Not at night.

The Chairman: I mean any time, going to Richmond.

The Witness: We are not permitted to, unless it is beyond the State line of Virginia.

By Mr. Watkins:

Q. Are there other truck services in that same territory?

A. Yes.

Q. Will you name some of them?

A. There is Horton Motor Lines, Barnwell Brothers, [fol. 875] Poole Transportation Company, Interstate Transfer, Atlantic States Motor Line, Colonial Motor Lines——

Mr. Abeles: May I interrupt one moment? Do all of these lines run on the Raleigh-Richmond route?

The Witness: All of them come into U. S. 1, some of them come through Raleigh. All come into U. S. 1 at Henderson, anyway.

Mr. Abeles: Then U. S. Highway No. 1 through Petersburg to Richmond?

The Witness: That is right. I am not familiar with those who come to Raleigh and go through Henderson, either hit Henderson going by Raleigh, or coming through Durham, going into Henderson.

By Mr. Watkins:

Q. Are there any others that you can think of?

A. The R-C Motor Lines, and I believe I mentioned the United Motor *Motor* Express. There are others, but they just happen *do* be those that I recall offhand.

Q. Have you ever seen any demand for additional motor carrier service over this route?

A. No.

Q. Do you think it is amply served at the present time?

A. I should think very amply.

Q. Do you compete with most of these operators whom you name?

[fol. 876] A. Yes.

Q. Do you have any competition from private truck operations?

A. Yes.

Q. What, in your opinion, is the basis for the institution of private truck services?

A. I think it is due to the fact that they can make their own deliveries by their own trucks at the existing rates and feel that they are being remunerated for the service.

Q. Does the element of service have any bearing on private truck competition?

A. You mean insofar as concerns the common carriers and the private trucks?

Q. Yes.

A. I do not think so.

Q. Is all of the service that any merchant might want at the present in this area?

A. I think so.

Q. And then the basis for private trucks in this area would be rates rather than service?

A. I think originally, up until three or four years ago, until transportation got fully developed, that one of the primary reasons was service. Now since there is ample service, I feel that regardless of what additional service is [fol. 877] put on, it will not turn much of the private owners' commodities back to any form of transportation, unless rates are put down to such a point that they would find it cheaper to ship by existing forms of transportation than in operating their own trucks.

The Chairman: You think the rates are too high?

The Witness: I think the wholesalers think they are too high.

Mr. Watkins: I believe that is all.

Cross-examination:

By Mr. Abeles:

Q. Mr. Koonce, in your opinion can a wholesaler operate his own trucks cheaper than you can?

A. I didn't say that.

Q. I said in your opinion?

A. No, I don't think so.

Q. Well, I understood you to say that the traffic now carried in the wholesalers' privately owned trucks would not be diverted to any other form of transportation, is that what you said?

A. Unless there was a reduction in rates to such points they felt — would be cheaper to ship by existing forms of transportation rather than by their own trucks. In making that statement, to qualify it, I might say that we run a merchandise warehouse here and are probably the largest [fol. 878] distributor of merchandise in Raleigh. That has been our experience over a number of years.

Mr. Abeles: I didn't get the last part of that answer.

(The answer is read by the reporter).

By Mr. Abeles:

Q. Are you referring now to large concerns like Proctor and Gamble who assemble their shipments in warehouses?

A. I was speaking mainly of what you might call the grocery line, such as wholesalers, jobbers and canned goods, soaps and things of that kind.

Q. Do you handle those shipments from those warehouses for these concerns?

A. We used to handle quite a few.

Q. But you don't now?

A. Very little.

Q. What I am trying to get at, Mr. Koonce, is why these wholesalers can operate their own trucks cheaper than you who are engaged in highway transportation as a business?

A. Well, I didn't say that. But usually when the whole-

saler sends his truck out he has a full load for a certain route. And I believe it is the opinion of most wholesalers, as to whether it is based on actual facts of cost I am unable to say, but it is the opinion of most wholesalers that at the present rates they are able to do that service at a profit.

[fol. 879] Q. You mean cheaper than you could do it for them?

A. Cheaper than any form of transportation could. When I say cheaper, I mean from the standpoint that they think they make a profit on the transportation.

Q. Do you know whether or not they add the cost of transportation to the price they get for their product?

A. In a number of cases I know it to be a fact.

Q. To be the fact?

A. Yes.

Q. Wouldn't it be advantageous to those concerns to use your service if you could prove to them that you could do it cheaper than they could perform it themselves?

A. I think it would.

Q. Have you never been able to satisfy them that you could do that?

A. I am not that good a salesman.

Q. Now, Mr. Koonce, you stated that you started operations in North Carolina in 1927, I believe.

A. Yes.

Q. What was the start of service?

A. Our first motor operation was between Raleigh and Greensboro.

Q. And when did you start your Raleigh-Henderson, Petersburg and Richmond service?

A. If I recall correctly, either the fall or spring of 1931.

[fol. 880] Q. In 1931?

A. Yes.

Q. The railway was in existence and operating at that time, was it not?

A. Yes.

Q. As I understand your position in this proceeding, it is that you are protesting against the service for which authority is here sought on the ground that there is ample transportation service already in exestence between the points covered, is that correct?

A. That is one reason.

Q. Now, confining our discussion to that reason, when you started that service between Raleigh and Richmond, did

you ascertain whether or not there was sufficient rail transportation service between those points?

A. Well, as a matter of general knowledge, I felt that I knew.

Q. What do you know?

A. And the application was heard before both Utilities Commissions of Virginia and North Carolina who determined it upon the convenience and necessity of the public.

Q. Did you make an effort to ascertain whether you could have employed rail service either in whole or in part to deliver shipments carried by you between points intermediate between Raleigh and Richmond?

A. We knew it to be a fact.

[fol. 881] Q. No, you didn't get my question. (Question is read). Did you make any investigation to determine whether or not you could use rail service in connection with your highway service for the delivery of shipments carried part of the way by you and by truck?

A. Naturally, I didn't because I knew there had been no precedents set in this territory where there had been any coordinated service between rail carriers and independent motor carriers.

Q. Yet, you are protesting that the railway in inaugurating this truck service should not do so because they should first come to you and ask you to supply the service for them? Is that your position?

A. Well, I say that the railroads had the opportunity offered of a great number of years in which the public was demanding a better service to inaugurate the same thing that they are now attempting to inaugurate. After the motor lines complied with the various state laws and had demonstrated to the public that they were in position to give the type of service the public demanded, I do not feel right now that the railroads should come in and invade the territories that have been set up and the rights of the Motor Carriers.

Q. I don't want to argue with you. At the time you inaugurated your service you had no compunction about invading the railroads' territory because you felt you were giving a superior service?

[fol. 882] A. I knew I was giving a superior service.

Q. Yet you are objecting now to the railroad invading what you deem your territory? by what they consider a superior service. Is that your statement and position?

A. What?

Q. Read that question. (Question is read).

A. We had something better to offer, and I don't think the railroads have.

Q. You don't think the railroad, sticking to this application in this route involved in this proceeding, will be able to perform a better service then they are now performing by rail on less than carload shipments. A better service than you are now giving?

(Discussion off record).

Mr. Abeles: I think we have gone far enough along this line of inquiry. I think that is all.

Redirect examination.

By Mr. Watkins:

Q. Mr. Koonce, when you began this service from Raleigh to Richmond, you began a different type of service than that that was in existence at the time by railroad?

A. That's true.

Q. And the railroad is proposing to begin the same type of service that is now in existence by motor carriers?

Mr. Abeles: You are not putting that in the witness' mouth, are you?

[fol. 883] Mr. Watkins: No more than you have been testifying for the last few days.

Mr. Abeles: You don't think that those are the conclusions that can be drawn from the testimony here, do you?

Mr. Watkins: Well, let the Commission draw the conclusions.

The Witness: Shall I answer that question.

Mr. Watkins: You don't have to answer.

By Mr. Watkins:

Q. Do you interchange with other motor carriers, do you not?

A. Yes.

Q. And to and from points between Henderson and Richmond, you interchange with other carriers that handle ship-

ments to and from Wilmington, Columbia, Charlotte, Rutherfordton, and points in that general area?

A. Yes.

Q. Would you be willing to interchange traffic with the Seaboard Air Line railroad for these points that you serve at either Richmond or Henderson?

A. Yes.

Mr. Abeles: You would be willing to take it all, in other words, would you?

The Witness: I said I would like to give them a break if they are going to make $48,000 a year on the operation. I mean that I would like to get a break.

[fol. 884] Mr. Abeles: If I understand your last statements summarized are that you would be glad to take our traffic, but would not be willing to share yours with us.

The Witness: We are only too glad to share traffic with you to the points we do not serve.

Mr. Abeles: Not to the points you do serve?

The Witness: Not unless it is with the points you could serve to better advantage than we could.

Mr. Abeles: In other words, still revolves itself in the same proposition. You would not be willing to short haul yourself.

The Witness: Generally speaking no.

(Discussion off record).

Mr. Watkins: That is all.

(Witness Excused).

R. G. Young was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. What are your initials?

A. R. G.

Q. Where do you live?

A. Henderson.

Q. What company are you connected with?

A. The United Express Company.

Q. How long has that company been in operation?

[fol. 885] A. I think it was started in 1932.

Q. And what territory do you serve?

A. Runs from Henderson to Norlina and from Norlina to Weldon.

Q. Is that all of your operations?

A. Yes, sir, and return.

Q. And what type of service do you have between Henderson and Norlina?

A. We have one truck that returns.

Q. And you serve the intermediate points?

A. Yes.

Q. Are there other truck lines competing with you for the business at the points between Henderson and Norlina?

A. Yes, sir.

Mr. Abeles: I'm not objecting to that type of question here for I think the witnesses ought to be confined to their own companies if other companies are operating here——

The Chairman: I don't know. I think that is competent as tending to show the number of operators and forming a basis where by the commission might conclude that the territories were sufficiently served.

Mr. Abeles: If those other companies desired to appear. They could have appeared here and done so.

The Chairman: I think that would be competent. Overruled and exception.

By Mr. Watkins:

Q. Do you know approximately how many concerns you [fol. 886] compete with in that area?

A. I would say approximately 15 or 20.

Q. You think those points are amply served by motor carriers?

A. Yes, one passing you nearly all the time.

The Chairman: What?

The Witness: There is one passing there nearly all the time.

By Mr. Watkins:

Q. Has it come to your attention from anybody that there was any public demand for additional service in that area?

A. No, sir. I haven't heard of it.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. You say there are 15 or 20 motor carriers operating between Norlina and Henderson?

A. Something like that.

Q. Are they all certificated common carriers?

A. Right many of them are. I think most of them are. Mr. Koonce named about 10, I think, and he didn't get all of them.

Q. Serving all intermediate points?

A. Yes, put off anywhere along the highway at those stations.

Q. Then you think one more wouldn't hurt?

A. Well, I don't know, sir. Right many there now.

Q. Your operations are concerned, as I understand it, between Norlina and Henderson so far as the route covered by this proposed service is concerned, is that correct?

[fol. 887] A. Yes, we run from Henderson to Norlina to Weldon and return in the afternoon.

Q. You couldn't help us beyond those points?

A. That is all the places we cover.

Q. How far is it between Henderson and Norlina?

A. About 18 miles.

Q. You want us, as I understand it, to give you our traffic at Norlina and Henderson and then take it back at those points?

Mr. Watkins: I don't think he testified to anything like that.

Mr. Abeles: I'm going to ask him.

Mr. Watkins: You stated "You want us".

Mr. Abeles: I'm trying to get his position clear.

Mr. Watkins: The witness testified only to the present service between those two points.

The Chairman: He is confining this question to that between Norlina to Henderson and intermediate points about two or three of them there, three, I think.

Mr. Abeles: I'm asking the witness whether he is proposing or whether it is his position that we should employ his truck service by interchanging with him at Norlina, permitting him to haul it 18 miles to Henderson and then giving it back to us. We want to carry it beyond by rail.

The Witness: I don't propose anything like that.

By Mr. Abeles:

Q. Do you advocate anything like that?

[fol. 888] A. No, sir.

Q. You don't think that would be reasonable?

A. I don't think that would be reasonable.

Mr. Abeles: That is all.

Mr. Watkins: I have got 7 that are scheduled to be here. You see there are 20 on the lines.

The Chairman: It is five o'clock, we will adjourn now until tomorrow morning at 9:15 o'clock.

(Whereupon the hearing adjourned until tomorrow, Tuesday June 15, 1937, at 9:15 o'clock.)

[fol. 889] Second Session

Raleigh, N. C., June 15, 1937, 9:15 o'clock

The Chairman: We are ready now to continue with the cases of the protestants.

B. L. Frazier was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected, Mr. Frazier?

A. Barnwell Brothers, Incorporated, Burlington, North Carolina.

Q. What is your position with that company?

A. Traffic manager.

Q. How long has that company been in operation?

A. Since the year, 1931.

Q. Describe the territories through which you operate?

A. As to this hearing, we operate over route No. 1 from Richmond to Henderson.

Q. What other points do you operate to?

A. We operate as far south as Columbia, South Carolina, through Charlotte, as far west as Shelby and Asheville. We operate north through Richmond to New York, and northwest to Scranton, Pennsylvania.

Q. Do you serve intermediate points?

A. Yes, sir.

Q. Do you serve intermediate points between Richmond [fol. 890] and Henderson?

A. We serve those points, that is with our own equipment, when the volume of the traffic is sufficient. That generally means 5000 pounds or more for one consignee or one point of delivery, otherwise we serve them through a connection.

Q. At what points do you connect for those points?

A. We connect at Henderson, N. C., and also Richmond, Va.

Q. Do you know approximately how many other companies operate through that area?

A. I would hate to hazard a guess. I should think there are 15 or 20 regular operators that are serving the territory.

Q. Have you ever heard any demand for any additional service at that point?

A. No, sir.

Q. Do you interchange with other truck companies serving the southeast and eastern seaboard, generally?

A. Yes, sir, we do. We interchange with lines at Raleigh, serving eastern Carolina at Fayetteville, and also Charlotte. That is with lines that serve the Western Carolina territory.

Q. Have you seen any demand for additional service in this territory?

A. I have not, sir.

Q. Or particularly the territory between Henderson and Richmond?

A. No, sir.

[fol. 891] Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Frazier, what did you say your position with the company was?

A. Traffic manager.

Q. I understood you to say in reply to Counsel's question to whether you served points intermediate between Richmond and Henderson, that you did so provided you had a load of 5000 pounds or more to one consignee, is

that correct? Or to one destination, otherwise that you provided that service through connections?

A. Yes.

Q. Then in the event that you were offered a shipment by the Seaboard from South of Henderson to intermediate points between Henderson and Richmond of less than 5000 pounds you would not accept that as I understand?

A. Under our present operations, no.

Q. Mr. Frazier, have you filed your interstate tariffs to all points served by you?

A. Yes, sir.

Q. Have you filed a tariff covering Dinwiddie?

A. Without knowing the exact location of Dinwiddie, I hesitate to answer that. But if it is on highway No. 1 between Richmond and Henderson, yes, sir.

Q. (Shows him a map.)

A. Yes, we have.

Q. Do you publish your own tariffs or are you party to [fol. 892] Miller's tariff?

A. We are a party to Miller's tariff.

Q. Mr. Frazier, I'm handing you a copy of the tariff designated as MF-ICC No. 2, commonly known, I believe as Miller's Tariff, and look at Dinwiddie in that tariff and tell me whether you are shown as publishing tariffs covering that point?

A. This is Horton tariff. Well, to answer your question, we are not listed there as serving Dinwiddie. However, under the method noted in the tariff, we would apply Petersburg rates or Richmond, whichever point is shown.

Q. The nearest point to and from which your tariffs are published in Miller's tariff?

A. Yes, sir.

Q. And you have no specific rates to Dinwiddie but you would apply the tariff covering the nearest points between Dinwiddie intermediate?

A. That's right.

Mr. Abeles: That is all.

(Witness excused.)

C. A. DUGGAN, JR. was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. What is your name?
A. C. A. Duggan, Jr.
Q. With what company are you connected?
A. Horton Motor Lines, Incorporated, Charlotte, N. C.

—. ——.

[fol. 893] A. Traffic Manager.

—. ——.

A. Well, I don't know just exactly the date, it was previously a receivership and Mr. Horton, Horton Motor Lines, Incorporated, either the latter part of 1930 or the first of 1931. I don't remember just which.

Q. Do you know whether or not you filed application with ICC with rights to operate?
A. Yes.
Q. What territory do you operate in?
A. Do you mean with our own units?
Q. Yes, sir.
A. We operate direct from Charlotte through Greensboro, Raleigh, Henderson, Richmond, Baltimore, into New York City, from Baltimore up to Wellingsboro on up to Harrisonburg, from Greensboro up to Shenandoah Valley, through Cumberland Mountains and Pittsburgh. If we have our own units we work out of Shelby terminal, Rutherford, Cliffside, Henrietta; and out of Hickory, we work Morganton, and the intermediate points around Hickory, Granite Falls, Newton, and Conover.

Q. Do you serve territory between Richmond and Henderson?

A. Yes, sir. We have regular schedules going through there.

Q. About how many trucks a day do you have going through that route?

A. We have regularly 13 schedules each way.

Q. Thirteen schedules each way?

A. Yes.

[fol. 894] Q. Are you connected with other motor carriers covering the south and eastern seaboard, generally?

A. Yes, we interchange at Richmond, Henderson, Greensboro, and Charlotte.

Q. Have you seen any need or any demand for additional service between Henderson and Richmond?

A. No, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. You say you operated 13 schedules each way between Richmond and Henderson?

A. Yes, that is our regular schedule.

Q. Do they all perform local and intermediate service?

A. Well, if there is a need for it. Yes, there is very seldom any need for it.

Q. What I'm trying to get at is this. Are any of these schedules through without local stops?

A. Well, they are all supposed to go through without local stops, unless there is traffic at those points.

Q. On any of those schedules do you load exclusively through traffic?

A. That would be hard to answer.

Q. You don't know.

A. I don't know just what the loading is to be composed of.

Q. What I'm getting at is this, Mr. Duggan, on all of [fol. 895] your schedules will you make local stops provided there is cargo for intermediate points?

A. Yes, if there was traffic to warrant it. Otherwise it is handled in connection with connecting lines.

Q. Have you any limitations such as Mr. Frazier stated with reference to the size of loads which you will accept?

A. I didn't put any specific limitations on it at all.

Q. You are catering, are you not, primarily to through business?

A. That's right.

Q. And you do not encourage that? You take through business in preference to local business?

A. That's right, but I wouldn't say we take it in preference to it. We solicit the through business, naturally more than we do the local business.

Q. If you had such a volume of traffic on any given day moving in a given direction, that you could not carry it all in your scheduled trucks you would give the right of way

to your through business, would you not, and delay the local business?

A. We would operate extra trucks.

Q. If you had them.

A. Yes.

Q. If business was too great for the number of trucks which you had available, you would give priority to your through moves, would you not?

[fol. 896] A. We have never run into that condition. I don't now.

Mr. Watkins: How many trucks have you got?

Mr. Abeles: Just a moment.

Mr. Watkins: How many trucks have you got?

The Witness: I declare I don't know. I couldn't tell you exactly. Well, 369 was the last figure that I had, I believe.

Mr. Abeles: That is all.

Mr. Watkins: That is all for the protestants.

(Witness excused.)

The Chairman: Anything further from you, gentlemen?

Mr. Abeles: Mr. Chairman: I'm not sure what the procedure is in Motor Carrier proceedings regarding the introduction in evidence of ICC tariffs. I believe in other cases, it is the practice to permit incorporation of such tariffs by reference provided they are properly designated or sufficiently designated to identify them clearly. Before proceeding, I should like to be enlightened on that point.

(Discussion off record.)

Mr. Abeles: I wish to offer in evidence, supplement 4, to ICC tariff, MF-ICC No. 2, effective May 30, 1936, issued by J. B. Dempsey, under rules of practice issued May 10, 1937. The Commission has provided that except as indicated in the special rules there promulgated, proceedings under the Motor Carrier Act, 1935, are governed by the applicable or [fol. 897] analogous provision of the Commission's rules of practice. Rule 13 (C) of these rules provides as follows, "In case any matter contained in a tariff schedule on file with the commission is offered in evidence, such tariff schedules need not be produced or marked for identification, but the matter so offered shall be specified with particularity in such manner as to be readily identified, and may be received in evidence subject to check by reference to the original tariff

schedules so on file." Pursuant to that rule I wish to offer in evidence by reference, MF-ICC, No. 2, this is a correction of my previous reference. MF-ICC, No. 2, effective April 1, 1936, issued by J. B. Dempsey, Agent, and all amendments and supplements thereto. I explain that my purpose in offering this tariff is this, there has been a volume of testimony regarding the number of carriers serving the routes involved in this proceeding. It has been, of course, impossible for us to check currently whether or not those carriers professing to operate over this route and serving intermediate points thereon, have filed tariffs in accordance with the existing requirements. And I wish this tariff in evidence so that that can be checked if the question becomes of importance.

Mr. Watkins: Mr. Commissioner, I want to object first on the ground that he has not complied with the rules of the commission by identifying the part of the tariff he is attempting to introduce in particularity as required by the rule. I also want to object on the grounds that this tariff [fol. 898] does not show ever- point to which service is offered by Motor Carriers, parties thereto. Nor does it refer to all of the Motor Carriers that are operating over this line, but only to those that are members of the Southern Motor Carriers Rate Conference; and I do not think that he has complied with the rule nor has he put in by this method any evidence that is of any weight whatsoever in this matter.

The Chairman: Now the weight of the evidence is something to be considered by the commission in reaching its final conclusion in this matter. So far as the tariff goes we think it is competent to show what it does show. And it will be admitted subject to check as provided for in the rule mentioned at the time the tariff was offered in evidence.

Mr. Watkins: Do you think he has complied with the rule by describing in particularity?

The Chairman: Seems to me he has identified if there in such a way it can be found by the commission, what the purpose of it is——

Mr. Abeles: I think my explanation of the purpose of the tariff sufficiently justifies the introduction of the entire tariff rather than any part of it.

Mr. Watkins: May I note an objection.

The Chairman: Yes. Objection by the protestant overruled and exception.

Mr. Watkins: Now, may it please the commission, I want to incorporate into the record by specific reference item 27 [fol. 899] A, in supplement No. 1, to the tariff introduced by applicant, reading as follows:

"A. Rates for any point of origin (see note) via any carrier a party hereto from which rates are not provided in connection with such carrier, will be the same as published herein from the next most distant point for account of such carrier."

"B. Rates to any point of destination (See note) via any party a party hereto, to which rates are not provided in connection with such carrier, will be the same as published herein to the next most distant point for account of such carrier."

"Note. No carrier is obligated under this rule to accept shipments from or to such points at which they do not have facilities for service."

The Chairman: That part of the tariff offered by the protestants and particularly referred to by the protestants' counsel, will be admitted in evidence.

The Examiner: I would like to ask a question of counsel for protestants. Is it possible to determine from any part of the tariffs so far admitted in evidence, what carriers serve the routes involved in this proceeding? That is to say, between Richmond, Virginia, and Henderson, North Carolina?

Mr. Watkins: I don't think such could be determined with any degree of accuracy from the tariff. I think that must [fol. 900] necessarily rest upon the testimony of witnesses of those lines. That note was put in there so that carriers could give service to those intermediate points.

The Examiner: My point is this: You have referred particularly to a specific note. Is there a possibility of referring particularly, and I ask counsel for both sides, in regard to this tariff in that respect, to any particular list or portion of the tariff which would show what carriers were included in the tariff, purporting to serve this route?

Mr. Watkins: No, I do not think it is at all possible, and I urge that as an objection.

(There was a discussion off the record.)

The Examiner: Is there any way to tell by the participation or concurrences in this tariff which of these carriers

purport to serve points upon this route directly with their own equipment or whether they purport to serve it by interchange or connections? Is there any way to distinguish what the different carriers do?

Mr. Watkins: I say that it cannot be done from this tariff in any way. It cannot be done from this tariff, and as an example, I want to show you that on pages 117, 118, and 119 of the original tarriff——

The Examiner: Referring to the original tariff specifically.

The Chairman: Was that the tariff offered by the petitioner

[fol. 901] Mr. Watkins: Yes, Agent Dempsey's MF-ICC No. 2, and on those pages you will find over ninety carriers listed as giving irregular service between all points in North Carolina and Virginia. And under the tariff as constructed, those carriers might or might not maintain service between the points on this line; but until their applications have been determined by the Commission, it was necessary to set up a tariff that did not tie them down to any particular route until such times as their applications were passed on. The only way from any records that this could be determined, is by reference to the applications on file with the Commission.

The Chairman: Let me ask you this. Did you offer that tariff for the purpose of showing the number of operators on this route, number of motor operators between Richmond and Henderson?

Mr. Abeles: No.

The Chairman: Or the rates and charges applicable?

Mr. Abeles: No, Mr. Chairman, my purpose in introducing this tariff was simply to provide us with a check to determine whether or not the carriers who in this proceeding have professed to serve the points on this route, have published tariffs which under the Commission's tariff regulations they would be required to file with the Commission as a prerequisite to serving those points, not to enumerate the carriers actually operating over this route, but merely [fol. 902] to check whether or not they have complied with the Commission's tariff regulations in such manner as to permit them to serve the intermediate points on this route. I can't say at this time whether I shall ever use or refer to this tariff.

The Examiner: The Examiner's inquiry was due to some implication which he apparently got into his mind through

a misinterpretation of your statement. It was that you had not had opportunity to check who the carriers were who operated upon this route and that was part of your purpose in asking the admission of the tariff. Personally, the Examiner feels that for that purpose, the tariff might show many concurring carriers who never operate physically over that particular route.

Mr. Watkins: I had specifically refrained from referring to this tariff because I realized that under this tariff there are some operators shown by reference to routes in here as serving those points that don't maintain a service there. I have attempted to try to tie it down to where it would be of some value to the Commission.

The Chairman: I think with the explanation of Mr. Abeles, that it is not offered for the purpose of showing the number of carriers, but for the purpose of showing that, the requirements and restrictions placed upon the carriers who actually do operate, that it is perfectly competent.

[fol. 903] Mr. Watkins: Mr. Commissioner, that being the case, I think the only thing that we can do is to put into evidence all of the tariffs of all of the carriers that are involved so that we can see whether or not there are other limitations in other tariffs that would affect this evidence; and, therefore, I want to offer in evidence all of Agent Miller's tariff, formerly Agent Dempsey's, numbered MF-ICC No. 1, through MF-ICC No. 85, for the purpose of allowing counsel for applicant to reall find out what service there is between Henderson and Richmond.

Mr. Abeles: We have no objection to that, Mr. Chairman.

The Chairman: All right.

(Discussion off record.)

Mr. Watkins: (To the reporter) Make that 88, instead of 85. They have got three more out.

(Discussion off record.)

The Chairman: Is there anything else?

Mr. Abeles: Mr. Chairman, I have not yet moved, and I now do so, that the evidentiary parts of the application filed in this proceeding be considered a part of the record.

The Chairman: I will ask Mr. Stanly a question or two. You signed the application under oath, did you not?

Witness Stanly: Yes, sir.

The Chairman: Are all of the exhibits which are contained, evidence of records and other evidence on behalf of [fol. 904] applicant, true and correct to the best of your knowledge and belief?

Witness Stanly: They are.

Mr. Watkins: We have no objection.

The Chairman: The ruling is that they will be considered in evidence.

Mr. Abeles: That is all.

Mr. Watkins: Is that all?

Mr. Abeles: Yes.

The Chairman: Do you want to file briefs?

Mr. Watkins: Mr. Commissioner, in view of the motion that has been made, I will probably desire to file a brief in all of the series of cases supporting that motion. In such brief, it will probably be necessary for me to refer to some of the other facts in it, so I want to reserve that right.

There is one other thing I want to put on the record, Mr. Chairman.

(Discussion off the record.)

The Chairman: Since it is understood that the brief will to some extent and perhaps almost altogether, goes to the questions raised in a motion filed by the intervener, which has also been filed in cases heard at Columbia, South Carolina, on June 11 and 12, in which cases the brief date was set as July 12, 1937, the Board will set the brief date in this [fol. 905] case also at July 12, 1937, as it is understood that it may be one brief.

If extensions are necessary, of course they will have to be obtained from Washington.

Mr. Watkins: Mr. Chairman, since this record has begun, I have received inform[illegible] from the Interstate Commerce Commission in Washington that the Joint Board must first rule on my motion for consolidation. Thus, I want to at this time remake my motion for consolidation, and ask this Joint Board to please give a ruling on it.

The grounds for this motion are the same grounds stated at the beginning of the hearing.

The Chairman: Yes, and we ruled against it. The motion is again denied, to which denial the intervener excepts. We still feel that since the Interstate Commerce Commission set these cases before different Boards, whether they did it wisely or not, is not for us to say; but it now involves the

jurisdiction of different Boards, and this Board cannot attempt to control by consolidation what other Boards will have before them. Having set them before four different Boards, this Board does not feel it has the power, nor if it had the power, would it attempt to say that the should be consolidated, in view of the fact that the Interstate Commerce Commission in its discretion divided them into four [fols. 906-907] groups before four Boards.

Is that all?

Mr. Abelos: Yes, sir.

Mr. Watkins: That is all.

The Chairman: That concludes this case, gentlemen.

(Whereupon, at 10:20 o'clock a. m. on June 15, 1937, the hearing was closed.)

[fol. 908] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC 86687
Sub—No. 2

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 2, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Henderson and Raleigh, North Carolina.

No. MC 86687
Sub—No. 4

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 4, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Hamlet and Raleigh, North Carolina.

No. MC 86687
Sub—No. 5

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 5, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Hamlet and Wilmington, North Carolina.

[fol. 909]

No. MC 86687
Sub—No. 6

In the Matter of the Application of SEABOARD AIR LINE RAILWAY (Legh R. Powell, Jr., and Henry W. Anderson, Receivers) a Corporation, of S. A. L. Ry. Bldg., Norfolk, Virginia, for a Certificate of Public Convenience and Necessity, Form BMC 8—Sub. No. 6, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the State of North Carolina, Between Monroe and Rutherfordton, North Carolina.

Rooms of the N. C. Utilities Commission,
Raleigh, North Carolina,
June 15, 1937, 9 o'clock a. m.

Met pursuant to notice.

Before: Joint Board No. 103, consisting of: Hon. R. O. Self, Chief Clerk of the N. C. Utilities Commission, Raleigh, North Carolina, Chairman.

Present: W. W. McCaslin, Examiner, Bureau of Motor Carriers, Independence Building, Charlotte, N. C.

APPEARANCES:

Chas. T. Abeles, SAL Ry. Bldg., Norfolk, Va., appearing for the Applicant.

Edgar Watkins, Jr., Bona Allen Bldg., Atlanta, Ga., appearing for Southern Motor Carriers Rate Conference.

W. P. Horton, Pittsboro, N. C., appearing for P. & F. Motor Lines.

[fols. 910-912] Proceedings

The Chairman: The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, Docket MC 86687, Sub. No. 2, application of the Receivers of the Seaboard Air Line Railway for a certificate as a common carrier of commodities generally, in interstate commerce, between Henderson and Raleigh, North Carolina. This case will be again called and proceeded with following the conclusion of the hearing on Docket No. MC 86687, Sub. No. 7, now on hearing before Joint Board No. 7.

The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, composed of R. O. Self, of North Carolina, Docket No. MC 86687, Sub. No. 4, application of Seaboard Air Line Railway, the Receivers, for a certificate as a common carrier of commodities generally in interstate commerce between Hamlet and Raleigh, North Carolina. This case will again be called and proceeded with after the conclusion of Docket No. MC 86687, Sub. No. 7, now on hearing before Joint Board No. 7.

The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, composed of R. O. Self, of North Carolina, Docket No. MC 86687, Sub. No. 5, application of the Receivers of the Seaboard Air Line Railway for a certificate as a common [fol. 913] carrier of commodities generally, in interstate commerce, between Hamlet and Wilmington, North Carolina. This case will be again called and proceeded with upon conclusion of the hearing in Docket No. 86687, Sub. No. 7, now on hearing before Joint Board No. 7.

The Interstate Commerce Commission has set for hearing at this time and place, before Joint Board No. 103, composed of R. O. Self, of North Carolina, Docket No. MC 86687, Sub. No. 6, application of the Seaboard Air Line Railway Company, Receivers, for a certificate as a common carrier of commodities generally, in interstate commerce, between Monroe and Rutherfordton, North Carolina. This case will be again called and proceeded with upon the conclusion of Docket No. MC 86687, Sub. 7, now on hearing before Joint Board No. 7.

(Whereupon, a recess was taken.)

10:30 a. m., June 15, 1937.

The Chairman: We will come to order, gentlemen. This is MC 86687, Sub. No. 2, the matter of the application of the Seaboard Air Line Railway, Legh R. Powell, Jr., and Henry W. Anderson, Receivers, for a certificate of public convenience and necessity, Form BMC 8, authorizing extension of operations as a common carrier by motor vehicle in transportation of commodities generally, in interstate commerce, in the State of North Carolina, between Hen-
[fol. 914] derson and Raleigh, North Carolina.

Is the petitioner ready?

Mr. Abeles: Yes, Mr. Chairman.

The Chairman: Will you give us the appearances?

Mr. Abeles: Charles T. Abeles, and Murray Allen, for the applicants.

Mr. Watkins: Edgar Watkins, Jr., representing the Southern Motor Carriers Rate Conference, an organization of more than 400 motor carriers operating to, from and between points in Southern territory, most of them directly in competition over the routes this application covers, appearing in protest of the application, on the grounds that there is adequate service over this route, and that there is no public convenience and necessity for additional service.

The Examiner: You will file a formal petition of intervention stating formally those grounds, within ten days, serving the necessary parties with copies?

Mr. Watkins: I will do that.

Mr. Self: The rules of the Interstate Commerce Commission require us to get some information with reference to those who are entitled to practice before the Interstate Commerce Commission, and its Boards. Mr. McCaslin will now request that information.

The Examiner: I take it that the gentlemen who have entered appearances as counsel in this case are all admitted
[fol. 915] to practice before the Commission, is that true?

Mr. Abeles: I am, Mr. Examiner.

Mr. Allen: So am I, Mr. Examiner.

Mr. Watkins: I am.

The Examiner: I should announce in case there is present a person who wishes to appear in a representative capacity, who is not an officer, or any one of the parties, or a party, himself, such a person can appear one time at hearings where he first hears this announcement in regard to the

requirement. The Commission is lenient in that respect. Such persons will not be allowed to appear, however, in future hearings at future dates after they have heard such announcement. They will be expected to apply.

No copies of the transcript will be furnished free. Any persons desiring copies have to arrange with the reporter. All those desiring copies will give written request to the reporter during the hearing.

(Discussion off record.)

Mr. Watkins: Mr. Chairman, notices sent out by the Interstate Commerce Commission indicate that there has been set on this date four applications of the same applicant for extensions of operations. They are the ones which you have announced. There is Docket No. MC 86687, Sub. 6, requesting an extension of operations between Monroe and Rutherfordton, North Carolina; Docket No. MC [fol. 916] 86687, Sub. 5, asking for extension of operations between Hamlet and Wilmington, North Carolina; and MC 86687, Sub. 4, for an extension of operations between Hamlet and Raleigh, North Carolina. They are all set for hearing before Joint Board 103. Prior to this time, counsel for protestants has filed with the Interstate Commerce Commission a petition to consolidate these four dockets, as well as four other dockets previously heard by other Joint Boards. No action has yet been taken by the Commission on that motion, and I desire to file that motion with you and urge its adoption.

(Files written motion with the Joint Board.)

Mr. Watkins: The grounds are stated in the motion which I have just filed.

The Chairman: It will be received and placed in the record, or filed with the record.

Mr. Abeles: Before you rule on that, I would like to state for the record that it is my understanding that counsel for protestants proposes to file a brief directed to the issues raised by his motion. In view of that fact, I shall not argue extensively the applicant's position with respect to those issues at this time, but preserve the right, of course, to file a written brief within the time fixed by the Board. I would like to say in this connection, that I desire to call to the attention of the Board that the formal notices promulgated by the Commission setting this and other cases

[fol. 917] for hearing, referred to the applications as "applications for extensions of operations," whereas in the particular case now before the Board, the application was filed not as an extension, but as a separate operation. Why the Commission in its notice characterized the application as one seeking an extension of operations, I cannot say; but I do wish to state that we neither applied for nor did we conceive of the proposal here involved as an extension of an existing truck operation.

The Chairman: The Board announces the denial of the motion for the reason that four of the cases have already been heard, and heard by other Boards.

Mr. Watkins: I wish to note an exception to that ruling.

Now, may it please the Chairman, I want to move that Dockets MC 86687, Subs. 2, 4, 5, and 6, be consolidated as those have not yet been heard and are set before the same Joint Board, and when viewed in connection with the present truck operation of applicant between Monroe and Hamlet, form a complete unit connecting at common points, which in effect creates an operation from Henderson, North Carolina, on the north, to Hamlet, North Carolina, on the south, and from Wilmington, North Carolina, on the east, to Rutherfordton, North Carolina, on the west, with no points between that are not served by motor carrier operations under these applications—not proposed to be [fol. 918] served under these applications, or presently served by an application of this applicant.

(Discussion off record.)

Mr. Abeles: Mr. Chairman, in the interest of expedition of these hearings, I have no objection to the consolidation proposed by counsel for the protestants, with the understanding, however, that the cross-examination will proceed in the same order as though the consolidation had not been made. In other words, that each witness produced by the applicant will be cross-examined with respect to his testimony immediately following that testimony.

The Chairman: The motion to consolidate the cases now before Joint Board No. 103, is granted, for the reason that the cases are before the same Board, by the same applicant, and much of the testimony that would apply to one, is common to the other.

Mr. Horton: I would like to ask permission of the Commission to enter an appearance, this being my first and only one.

Mr. Abeles: Have you filed your appearance?

Mr. Horton: I was going to.

The Chairman: Very well. Mr. Horton is a licensed attorney.

Mr. Horton: Licensed to practice before the State and Federal Courts, not the Interstate Commerce Commission. [fol. 919] The Examiner: Since Dockets MC 86687, Subs. 4, 5, and 6, have been consolidated with Sub. No. 2, in regard to which I made an announcement covering admission to practice and the necessity for petitions of intervention, the same announcement will apply to the cases so consolidated as it did to the first in which the statement was made.

I might add that the request of Governor Horton, just made, is a proper one, in view of the announcement made in regard to the necessity of application applying strictly only where one has already heard it in a previous case—the announcement of the necessity for such admission. Since this is his first appearance in such cases in which announcement was made, of course the Commission is supposed to allow him to appear.

The Chairman: You take the position with reference to cross-examination, Mr. Abeles, because of the fact that you expect to put witnesses on for each one of these cases and are not going to have any particular witness that will cover any of the pertinent facts in all of the cases?

Mr. Abeles: I expect to have witnesses, Mr. Chairman, whose testimony would be applicable to all of the cases. My reservation, however, was made with regard to the testimony of all witnesses, including those, too. So far as concerns the witnesses whose testimony is referable to the specific cases, we will have one witness who will testify [fol. 920] with respect to the issue of public convenience and necessity raised in three separate cases. It is my understanding that Mr. Watkins wishes to reserve his cross-examination of that witness until the testimony on all cases is completed, so that he will be required to cross-examine that witness only once with respect to his testimony on all three cases. That proceeding is not satisfactory to us. We want the cross-examination of that witness with regard to each case, to follow immediately upon the direct testimony in that case.

The Chairman: Was it your intention to wait until all of the direct evidence was in and then cross-question all of the witnesses, one following the other?

Mr. Watkins: No, sir, my intention, in view of the fact that the cases are consolidated—I believe all of the direct testimony of each witness should be finished before I cross-examine that witness. I am asking simply for the ordinary and usual procedure.

The Chairman: That is the usual procedure, and I think that of course it is always probable that a witness will be called back to ask him something, then he is subject to being cross-questioned then about that particular thing; but I think that we shall proceed in the usual manner, and if the witness is a general witness, the cross-examination is going to be general, and so forth, so the motion as made has been granted and the petitioner will proceed to put on his wit-
[fol. 921] nesses, his evidence, and then when the direct testimony is presented, the witness can be cross-examined. And I think we will make time that way. I can't see where it acts adversely to the petitioner.

(Discussion off record.)

Mr. Abeles: If the Chairman pleases, it is my understanding that the consolidation was granted with the privilege of counsel for the protestants to withhold cross-examination of the same witness who is testifying in separate cases until that witness' testimony is completed in all of the cases. Is that correct?

The Chairman: I think so. If you put one witness on and he completes his direct testimony with reference to either one or all that he testifies in, then when he completes that, his direct testimony, then the other side would have opportunity to cross-examine him.

Mr. Abeles: I am not questioning that. I want to know whether the ruling is that if Mr. Rogers, who is to testify in three cases, completes his testimony in the first case in which he testifies, the cross-examination of Mr. Rogers on that particular case will proceed immediately, or are we to be compelled to present Mr. Rogers' direct testimony on all three cases before cross-examination will be called for?

The Chairman: That was my understanding of con-
[fol. 922] solidation, yes. I think that would be the only reason for which it should be consolidated.

Mr. Abeles: Not at all, Mr. Chairman. The principal purpose of consolidation is to permit the testimony of two witnesses which will be common to all cases, to be given once instead of four times.

The Chairman: Isn't that true, also, of some of protestants' witnesses?

Mr. Abeles: That may be true as to that. I can't say. So far as our testimony is concerned, the principal purpose of the consolidation is, as I have just stated; we are not agreeable to the consolidation if it means that counsel for protestants is to have the right to reserve his cross-examination until the witness, who will be the same witness in three cases, completes his testimony on all three cases, whereupon Mr. Watkins and other counsel for protestants will cross-examine them with respect to all of these cases.

The Chairman: What do you mean by consolidation, then?

Mr. Abeles: As I say, it will consolidate the testimony of two witnesses whose testimony will be common to all cases, thus reducing eight appearances, to two.

(Discussion off record.)

The Chairman: I am going to permit that, with the understanding that the convenience and necessity will vary in this case. For that reason, I am going to permit that pro-
[fol. 923] cedure, to cross-question any witness that may testify with particular reference to any case, immediately after the direct testimony.

Mr. Watkins: I want to object to that. That is going to make the cross-examination three times as long as it would be otherwise.

The Chairman: We can't help that. We have got to make the record here, and it has got to be made intelligently, if we can make it that way. So the petitioner will proceed.

Mr. Watkins: I understand, then, that after I have cross-examined a witness on sub. 2, I cannot later in the hearing go back and ask him more questions about sub. 2?

The Chairman: No, that does not mean that.

Mr. Abeles: Now, Mr. Chairman, I think that he has got to announce, when a witness gets on the stand testifying in case "A," at the close of the cross-examination, he must announce that he has closed and not be permitted to come back at some later time and continue that cross-examina-

tion; because, otherwise, the whole effect of the ruling and the purpose for which I have been insisting upon the reservation, is nullified.

The Chairman: We will rule on that when it arises: You may proceed.

Mr. Abeles: This is Sub. No. 2, the Raleigh-Henderson application.

[fol 924] The Chairman: We are now taking up Sub. No. 2?

Mr. Abeles: Yes, sir. I will call Mr. Terrell for the purpose of testifying in Docket No. MC 86687, Sub. No. 2.

H. M. Terrell was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Terrell, please state your name, residence, and occupation.

A. H. M. Terrell, Raleigh, North Carolina, Division Superintendent of the Virginia Division of the Seaboard Air Line Railway.

Q. How long have you been superintendent of this Division, Mr. Terrell?

A. Twenty months.

Q. What position did you occupy—briefly?

A. Trainmaster in this same territory for twelve years.

Q. Does your territory cover the route of the Seaboard between Raleigh and Henderson, North Carolina?

A. It does.

Q. Does the route of the proposed application follow the rails of the Seaboard between those two points?

A. It does.

Q. Now, will you state what the proposal involved in this application is?

[fol. 925] A. It is a proposal to operate trucks handling less than carload business between Raleigh and Henderson, by Louisburg.

(The answer is read by the reporter.)

Q. Will you state the schedule of the proposed truck operations?

A. One truck is to leave Henderson at six a. m., and arrive at Raleigh at ten a. m. The second truck is to leave Henderson at 6:15, arrive at Raleigh at 9:50 a. m. The northbound truck is to leave Raleigh at 1:30 a. m., arrive Henderson at 5:00 a. m. The second truck is to leave Raleigh at 1:45 p. m., arrive at Henderson at 5:00 p. m.

Q. Then I understand there will be two trucks in each direction?

A. That is correct.

Q. Daily?

A. Daily except Sunday.

Q. Now, Mr. Terrell, will you proceed without interruption to explain the purpose the applicants have in mind in establishing the proposed truck service?

A. Yes. It is proposed to establish this service to advance the movement of less carload freight in this territory. The Seaboard now handles nightly a car loaded at Hamlet Transfer, which contains freight coming from Florida, Georgia, Alabama and the Mid-western section of the United States through connections, destined to Raleigh and [fol. 926] likewise, a similar car from Hamlet Transfer destined to Henderson. Under the proposed truck arrangement, this car loaded at Hamlet Transfer will contain, not only freight for Raleigh proper, but for all points between Raleigh and Henderson, exclusive of Henderson. This freight for points between Raleigh and Henderson, exclusive of Henderson, will be transferred from the car to a truck at Raleigh and handled by it to all intermediate points —the truck leaving Raleigh at 1:30 a. m. and arriving at Henderson at 5:00 a. m., thus insuring freight for all points between Raleigh and Henderson, exclusive of Henderson, being in the depots at the time the agency opens in the morning, as compared to present hours of delivery, varying from 7:40 a. m. at Neuse to around 3:30 p. m. at Kittrell. The local freight train moves north from Raleigh three days a week and south from Henderson three days a week. When it moves south from Henderson, this freight from south of Raleigh and Raleigh would be carried to Henderson by night freight train and then handled back by the local next morning—leaving Henderson at 9:15 a. m.—the deliveries at intermediate stations being 9:35 a. m. at Kittrell and around 4:30 p. m. at Neuse.

Freight moving from points intermediary between Raleigh and Henderson and destined to Richmond and/or Portsmouth, will be carried by truck to Henderson during the day and there loaded in a car destined to those two [fol. 927] points, being expedited 24 hours as compared to present train service.

With reference to the southbound movement: At the present time we have cars from each of the stations of Richmond, Portsmouth and Petersburg containing freight not only originating at these points, but which comes to the Seaboard from connections thereat, which moves during the night by train to Henderson or Raleigh, dependent upon whether it arrives on the day of the movement of the local freight train between Henderson and Raleigh, and is then moved by the local train to the intermediate points. The use of the truck service from Henderson will expedite these deliveries from a minimum of four hours to as much as 24 hours. Freight originating at Henderson or any of the intermediate points between Henderson and Raleigh will be picked up by the southbound truck and delivered not later than 10 a. m.

Shipments originating at points south of Henderson and consigned to Raleigh, Hamlet Transfer or points South or West thereof, will be picked up by the northbound afternoon truck arriving at Henderson at 5:00 p. m. and will there be loaded into cars consigned to Raleigh and Hamlet Transfer for rail movement, and this operation will expedite these shipments by 24 hours as compared with the present train service.

Although the use of these trucks for less-carload deliveries at points intermediate between Raleigh and Hender- [fol. 928] son will not materially lessen the number of stops to be made by the local freight train, because there will still remain carload shipments which will have to be delivered or received at these points, the elimination of the loading and unloading of less-carload shipments will avoid a substantial delay now caused by this lcl service and will improve the schedule of the local freight train. This is of particular importance on this route because from Franklinton to Louisburg the train is a mixed one, carrying passengers and U. S. Mail, for which schedules are important. At present, the train is frequently late into Louisburg—on an average, about one hour per day.

Mr. Abeles:

Q. You might explain, Mr. Terrell, whether Louisburg is on the direct route between Henderson and Raleigh?

A. No, sir. Louisburg is on a branch line ten miles from Franklinton.

Q. And the local freight train now operating between Raleigh and Henderson also operates the Louisburg branch?

A. That is correct.

Q. Is it proposed to have the truck do the same thing?

A. Yes, sir.

Q. You have described the primary purpose which the applicants have in mind in establishing this service, Mr. Terrell?

A. I have.

[fol. 929] Q. Will there be any reduction in existing train service, or crews?

A. No, sir.

Q. Resulting from this service?

A. No, sir, there will not.

Q. Mr. Terrell, can you tell us approximately what proportion of the less-carload traffic moved to and from points on this route will be carried partly by rail and partly by truck? Do you understand the question?

A. I think so. Practically all of it.

Q. The major portion of it, at any rate?

A. Yes, sir.

Q. Will there be any expedition in the train movement other than that which you have already described?

A. Well——

Q. Strike that question. I think you have covered that. Mr. Terrell, you stated, I believe, that your train schedule was now only three times a week, is that correct?

A. In each direction; on the main line, it is daily—between Franklinton and Louisburg.

Q. You have a separate operation between Franklinton and Louisburg on the days on which your main line train does not operate?

A. No, sir, the main line train operates into Louisburg in the days it goes north and also on the days it comes south.

[fol. 930] Q. Why have you only three trains a week in each direction on the main line?

A. Because that takes care of the business in this territory without any trouble.

Q. And there is insufficient business in this territory to justify a daily train?

A. That is correct.

Q. Your truck service, however—I believe you stated that there would be two trucks each way per day?

A. Except Sunday, yes.

Mr. Abeles: That is all on direct, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. Did you explain the reason for two trucks southbound from Henderson so near together?

A. The reason for the two, we didn't figure one would take care of all that business, including the Louisburg business.

Q. Is it your idea that these trucks will make all the towns, both of them?

A. Yes, sir.

Q. Why is one of them scheduled 25 minutes faster than the other?

A. We figured if there was not a heavy business for some of the smaller places, we could run a truck that on shorter schedule would not stop there. The other one right ahead of it, would.

[fol. 931] Q. Then you would load these trucks differently for different towns?

A. If the business permitted, yes.

Q. Both of them are going into Louisburg?

A. Yes, sir.

Q. And they would both carry freight between Henderson and Raleigh?

A. Yes, sir.

Q. Are you familiar with the express service in this territory?

A. You mean by rail?

Q. Yes.

A. Yes, sir.

Q. Rail express service?

A. Yes, sir.

Q. What kind of express service do they have over this line?

A. On the main line we have two trains per day which stop at Henderson, Franklinton and Wake Forest. They load and unload express at these points, once each way, a day. In addition to that, we have a local passenger train which handles express in each direction per day, which unloads at the other stations, also at Franklinton, also Wake Forest.

Q. How is Louisburg served?

A. Served by a truck operated by the Railway Express Company.

Q. Between where?

[fol. 932] A. From Franklinton to Louisburg.

Q. Do you know how the express companies', the LCL rates compare with the rail LCL rates?

Mr. Abeles: I have not objected, up to this point. Counsel for protestants is asking questions directed to express service in this territory. We are not, of course, proposing to provide express service on these trucks and I can't see the relevancy of those questions.

Mr. Watkins: The issue, as I understand it in this case is whether or not there is need for additional service in this territory.

Mr. Abeles: Truck freight service.

Mr. Watkins: Any service of transportation, be it by air plane or wheelbarrow; and I think it is necessary to go into the service by all methods that are here available to the public as transportation facilities.

The Chairman: Well, I think the questions about express will not be admitted in this case. The reason the express company carries express on that line is not before us. You can call it freight—because we are all aware of the fact that there is express service on there. I imagine he doesn't know anything about the volume of express.

Mr. Watkins: I am not going into the volume. I was going into the service. He knows that, because the express company uses his trains to carry it on.

[fol. 933] Mr. Abeles: That is quite true, but it is quite a different service from the one we are proposing to render with these trucks, and which we couldn't render under our present application, and with which there could be no possible relationship. He might just as well ask whether there is air plane service between these points.

Mr. Watkins: I think we should, and if it were there, I would put it in the record.

Mr. Abeles: Very well. My objection still remains.
The Chairman: Go ahead and answer the question.
Mr. Abeles: The objection is overruled?
The Chairman: Yes, it is overruled.

By Mr. Watkins:

Q. My question was how does the express company's rates compare with the LCL rail rates?

Mr. Abeles: I again object to that.

The Chairman: That objection is granted. I was proceeding with this theory in the other case, that you were asking him if there was express service there.

Mr. Watkins: I did ask that first. Now I want to show what type service it is. Mr. Terrell would know.

The Chairman: Mr. Terrell is an official of the railroad company, is he?

Mr. Watkins: Yes.

The Chairman: But not of the express company. He can't testify as to the express company.

[fol. 934] Mr. Watkins: Mr. Chairman, the express company is nothing in the world but the creature of the railroad company, and it is part and parcel of the railroad company.

The Chairman: I understand that it is a different organization. I am sorry.

Mr. Watkins: They have set up that hypothetical line between express and LCL freight traffic that nobody has ever been able to find. It is the same freight hauled on the same rates. The only difference is that it is hauled on different trains and gets a different name, and——

Mr. Abeles: And it is of an entirely different character of service.

The Chairman: A separate company handles that, their statistics, the rates and traffic generally. I don't think he is qualified to do that.

By Mr. Watkins:

Q. You don't know anything about the rates?

Mr. Abeles: I objected to that, and I think the objection was sustained.

Mr. Watkins: I asked him if he knows anything about rail rates.

Mr. Abeles: Make your question clear. I have no objection to that.

By Mr. Watkins:

Q. Do you know anything about rail rates?

A. I am not familiar with them at this time.

[fol. 935] Mr. Watkins: Not until you get in another case.

Mr. Abeles: I object to that and ask that it be stricken out.

The Chairman: I don't think an attorney is entitled to speak for the witness.

By Mr. Watkins:

Q. Are you familiar with the points where the merchants at Gill and Kittrell and Franklinton, those points, purchase their commodities generally?

A. I don't know whether I am familiar with it or not, no, sir. I know where some of the shipments move from. I couldn't say what per cent.

Q. Where do they generally move from, into that territory?

A. They move into that territory usually from Richmond and through the steamer connections at Portsmouth, that is, the freight that moves in by rail.

Q. Isn't a good part of their business purchased at Raleigh?

A. Not that that moves in by rail. I don't know what per cent is purchased and moves in otherwise.

Q. You don't have any of it moved in by Raleigh?

A. We have some, but a very small part.

Q. How about Henderson?

A. A very small amount that moves from Henderson by rail. I think Henderson was the last place you asked about.

Q. I believe you testified yesterday in Docket MC 86687, Sub 7, involving proposed operations between Rich-

[fol. 936] mond and Henderson?

A. Yes, sir.

Q. Now, will you please describe how under that proposed operation and this proposed operation, a shipment from Wake Forest to McKinney would move?

Mr. Abeles: Just a moment before you answer that question. You said from Wake Forest to McKinney?

Mr. Watkins: Yes.

Mr. Abeles: I object to that question, Mr. Chairman, on the same grounds that we have consistently objected to efforts by counsel for the protestants to associate separate operations, separate hearings before Boards of the Interstate Commerce Commission, in separate hearings. Now if he wants to ask whether or not there is any such connection or if traffic moving over the route here under consideration will be carried through or over the routes covered by other applications, that is a different matter.

The Chairman: Carried to or from the points.

Mr. Abeles: Yes. It is a broad question he is putting. He is attempting to associate the two entirely together.

The Chairman: I can't see any difference in the effect the answer of one would have on the question, then the other one. I think I will let the witness answer it.

The Witness: A shipment that would be moved from Wake Forest to Henderson by truck operating in that ter- [fol. 937] ritory, moved from Henderson to McKinney, a truck operating between Henderson and Richmond.

Q. I believe you stated you had only tri-weekly service by rail over this line at the present time?

A. I didn't state that. I stated that the local operated that way, if I may explain it.

Q. That would mean local LCL freight would move by railroad into these towns only three days a week?

A. No, sir. It moves six days a week. I can explain that. The day that the local leaves Henderson coming south, the freight at Raleigh is moved by Henderson by through train that night, worked back the next day, the same way the local works in the other direction, and gives daily service.

Q. One day it comes via Henderson and the next day via Raleigh?

A. Yes.

Q. This present service would make it go either way, both ways, four times a day?

A. Well, there would be four trips through there.

Q. And the freight can move southbound out of there by either of two trucks, or northbound by either of two trucks, making the possibility of four movements a day as against the present, of one?

A. Yes.

Q. Did you testify that you would not load any Hen-
[fol. 938] derson freight on this Raleigh truck? Would any freight move between Henderson and Raleigh by motor truck?

A. In some instances, yes. It would not be the original set up.

Q. If you needed it to fill out the truck, you would probably put it on it?

A. To advance rush shipments after the truck had left in the afternoon, I figured we would, yes.

Q. You would use this service between Henderson and Raleigh, if it would expedite the movement of freight?

A. Yes, sir. That was my idea.

Q. And it would be possible to put on other trucks if you needed them, to expedite the service further, would it not?

Mr. Abeles: Do you mean different schedules or on the same schedule?

Mr. Watkins: Either way.

Mr. Abeles: I think that is a question of law. He is asking for a legal conclusion.

Mr. Watkins: I am asking what his intention is in case the traffic increases, or the need for additional service becomes apparent.

Mr. Abeles: You don't mean to ask this witness whether he could do that lawfully?

Mr. Watkins: I am not asking anything about the law. I am asking about his intention.

[fol. 939] Mr. Abeles: I am asking for an interpretation of your question.

Mr. Watkins: I realize what you want.

The Chairman: He is asking for an opinion.

Mr. Watkins: That is correct.

The Witness: It was my understanding that we could not do that.

By Mr. Watkins:

Q. This application is based upon the fact that you do not expect to put on trucks on this highway without further permission from the Interstate Commerce Commission?

A. I can't answer that question, sir. I haven't seen the application.

Q. That is your understanding?

A. That is my understanding, yes.

Q. And at this time you don't think it would interfere with the business of the railroad if such a limitation is placed on the certificate?

A. Not at the present time, no, sir.

Q. Would it interfere with the operations of this truck, these trucks, if your certificate was limited so as to require that the freight that moved on this truck moved part of the way by rail?

(The question is read by the reporter at the request of counsel for applicant.)

[fol. 940] Mr. Abeles: I have no objection, if the witness understands the question.

The Witness: Yes, that would interfere.

By Mr. Watkins:

Q. It would?

A. Yes, sir.

Q. Because you do contemplate the moving of freight between points of this line and points on other lines solely by motor carrier?

A. To the smaller stations where we might withdraw the local train service, there would be no other regular route except this.

Q. When you withdraw this local train service then?

A. Yes.

Q. Putting the trucks in, you must move by the trucks?

A. To mid-stations that are served only by the trucks, insofar as less-carload freight is concerned.

Q. To that extent there would be a lessening of your rail LCL local freight service?

A. No, sir. We would not lessen the service. I have tried to make it plain that applied only insofar as less-carload freight was concerned.

Q. I am speaking only of less-carload.

A. Yes.

Q. To that extent there would be a lessening of your rail LCL local freight service to these points?

[fol. 941] A. Yes.

Q. It would be?

A. Yes.

Mr. Abeles: Do you mean train service?

Mr. Watkins: Yes, I said train service.

By Mr. Watkins:

Q. You haven't given any figures concerning the tonnage moving from and to these points, have you?

A. No, sir.

Q. Do you intend to offer any evidence on that phase, of that nature?

A. I have that information.

Q. I asked you whether you intended to do it—ask your lawyer.

A. I imagine he wants to offer that.

The Witness: He wants to know whether we intend to offer these figures.

Mr. Abeles: I am perfectly willing to furnish any information you want.

Mr. Watkins: I asked the question whether you intend to.

Mr. Abeles: Not unless you wanted them.

Mr. Watkins: This is your case, not mine.

(Discussion off record.)

By Mr. Watkins:

Q. Do you intend to handle freight that originates at Henderson and destined to Wake Forest on this truck?

A. Yes, sir.

[fol. 942] Q. Have you got any intrastate permits from the State of North Carolina to do that?

A. I understand that we have not.

Mr. Abeles: For counsel's information, application is pending before the State Commission.

The Witness: I would like to make one correction in my statement. Mr. Watkins asked me how about the express handled. I said the American Express Company, I believe—I should have said the Railway Express Company. I had the name wrong.

Redirect examination.

By Mr. Abeles:

Q. Mr. Watkins asked you whether it was your intention to carry on this truck any freight from Raleigh to Henderson?

A. Yes.

Q. As I recall, you stated that it was possible. How would such traffic normally be moved?

A. It would normally move in a car by train which is loaded at Raleigh, daily, for Henderson and given points, and move to Henderson during the night by through train.

(Answer is read by the reporter at request of counsel for applicant.)

Q. That is not the local train which operates between Raleigh and Henderson, is it, Mr. Terrell?

A. No, sir, the through train is operated between [fol. 943] Raleigh and Henderson—I mean Raleigh and Richmond.

Q. Now could you explain the exceptional circumstances which would lead you to transport such traffic from Raleigh to Henderson by truck instead of the night through train?

A. Well, as we have not had this service, I just told Mr. Watkins I thought that under some circumstances we would do this, we would have shipments of meat or perishables of some kind that for some reason was delayed and was not loaded in a car for Henderson the night before. Naturally we would like to move that up there in this truck to advance the movement of shipments of that kind.

Q. Now what time must cars moving by this through train be loaded at Raleigh?

A. They must be loaded by 5:30 p. m.

Q. You say 5:30 p. m.?

A. Yes, sir.

Q. And that would arrive at Henderson about what time?

A. Arrive at Henderson around ten o'clock, ten p. m.

Q. Suppose you had a shipment of perishables or other shipment which required expedited movement, delivered for loading after 5:30, would you carry that by the truck leaving Raleigh at one-thirty a. m.?

A. In an exceptional case, we would. But the warehouse would be closed at that time and ordinarily we wouldn't have any such shipments as that.

[fol. 944] Q. Then, except in the rarest instances, you would carry those shipments through by rail?

A. Yes, sir.

Mr. Watkins: That type shipment usually moves by express, does it not?

The Witness: No, sir, we have quite a number of shipments of fresh meat by freight.

Mr. Watkins: Yours wouldn't be a refrigerated truck, you wouldn't use refrigerated trucks?

The Witness: No, sir.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: The witness many be excused, and we will take an adjournment until one-thirty.

(Witness excused.)

(Whereupon, at twelve-ten o'clock p. m., the hearing adjourned until one-thirty o'clock p. m.)

[fol. 945] Afternoon Session

N. C. Utilities Commission, Raleigh, N. C., June 15, 1937, one-thirty o'clock p. m.

The Chairman: We will come to order, gentlemen. Are you ready to proceed?

Mr. Abeles: I stated at the close of the noon recess that I had finished with Mr. Terrell. I should like to recall him for just a brief moment.

H. M. Terrell testified further as follows (in Sub. 2, MC 86687):

Redirect Examination.

By Mr. Abeles:

Q. Mr. Terrell, have you made an estimate of the cost of operating truck service involved in this proceeding?

A. Yes, sir.

Q. Will you please state what that is?

A. Yes.

Q. First you might state the mileage between the termini.

A. It is 62 miles, counting the distance into and out of Louisburg from Franklinton.

Q. And what is your estimate of the operating cost?

A. Based on 15.3 cents per mile, it would be $37.97 a day for the four trips, approximately $1000 a month.

Q. On what do you base your estimate of 15.3 cents per mile?

A. On the cost of a truck operated between Hamlet and Monroe.

[fol. 946] Q. Has that cost been compiled from recorded expenses, records of expenses incurred in the operation of that truck?

A. Yes, sir. The figures were furnished me from the records at Hamlet.

Q. Do you know by whom those records were prepared?

A. In the Division Auditor's office.

Q. Does that figure include all out of pocket costs such as wages, fuel, repairs and so forth, and depreciation?

A. Yes, sir.

Mr. Watkins: I want to object to that. The witness just testified he did not get the figures up, but they were furnished him by the Division office. Now he is going on further and testifying as to what the figures included, without having gotten them up.

By Mr. Abeles:

Q. I will put the question in this way. Have you a statement furnished by the Division Auditor showing the computation of that cost per mile figure?

Mr. Watkins: That is hearsay.

Mr. Abeles: I think it is common practice, Mr. Chairman.

The Chairman: Have you got the Auditor here who made that?

Mr. Abeles: No. It is common practice, I think.

The Chairman: We will admit it for the present, if it was made by the Auditor and furnished to him. I don't think it is admissible from the standpoint of evidence, if it was made by someone else who can't testify to what is in it, and [fol. 947] who made it.

Mr. Abeles: He can testify as to what the statement shows, what it contains.

The Chairman: Yes, he can do that.

Mr. Watkins: Why don't you put the letter in evidence?

Mr. Abeles: It is not in the form of a letter.

By Mr. Abeles:

Q. Will you now state what the statement shows to be included in the cost per mile which you have just recited?

Mr. Watkins: Did you prepare this statement?

The Witness: No, sir.

Mr. Watkins: I still urge my objection. He didn't prepare the statement. He is testifying as to what the statement includes.

Mr. Abeles: Mr. Chairman, I can produce the witness, if you prefer, under whose direction this statement was prepared.

The Chairman: I think it would be better for you to do that, if you can do it without any great inconvenience. I am not doubting the accuracy of it, but, that would be better.

By Mr. Abeles:

Q. Will you state, Mr. Terrell, that the cost per mile which you have used in estimating the cost of the Henderson-Raleigh truck service is based upon the cost of operating the Hamlet-Monroe truck?

[fol. 948] A. Yes, sir.

The Chairman: You can let it go in, if you have got somebody who can testify who made it.

By Mr. Abeles:

Q. Mr. Terrell, do you think that you can operate the trucks involved in the service here under consideration for not more than 15.3 cents per mile?

A. I haven't had any experience with them. In the figures that I have tried to make, I think that is about what the costs are. I can't say positively.

Q. Are you going to use larger or smaller trucks than those used on the Hamlet-Monroe route?

A. We are figuring on a smaller one.

Q. All the trucks you use will be smaller?

Recross examination.

By Mr. Watkins:

Q. What size trucks do you use between Hamlet and Monroe?

A. As I said, Mr. Watkins, the only thing I have is a statement furnished down there.

Q. You said you were going to use smaller trucks up here. You ought to know what they have got.

A. Three and a half ton truck down there.

Mr. Abeles: Are you willing to accept hearsay testimony on that?

Mr. Watkins: I am testing his knowledge on it.

By Mr. Watkins:

Q. How many feet long is the bed?

[fol. 949] A. I don't know.

Q. What is the horsepower rating of it?

A. I don't know.

Mr. Abeles: Are you speaking of the Hamlet-Monroe truck?

Mr. Watkins: The Hamlet-Monroe truck.

By Mr. Watkins:

Q. What size truck are you going to use on this run?

A. I am figuring on a ton and a half tractor with a 20-foot body, semi-trailer.

Q. Is that a straight truck used down there?

A. That is my understanding.

Q. You are going to use a truck and semi-trailer here?

A. Yes.

(Witness excused.)

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Rogers, state your name, residence and occupation.

A. R. W. Rogers, Division Superintendent, North Carolina Division, Seaboard Air Line Railway, residence, Hamlet, North Carolina.

Q. How long have you been superintendent of that Division?

A. Since September, 1934.

Q. What was your position prior to that time?

[fol. 950] A. For about eight years I had been superintendent of the Georgia Division, with headquarters in Atlanta. Prior to that time, I had been trainmaster and various other positions on the Georgia Division.

Q. You have always been on the operating staff?

A. I have.

Q. And what is the total number of years of your experience in railroad operations?

A. Something more than thirty years. I have been with the Seaboard about 29 and a half years.

Q. Mr. Rogers, you heard Mr. Terrell's testimony, did you not, regarding the basis used by him in estimating the cost of operating the trucks to be used between Henderson and Raleigh?

A. I did.

Q. Did you have prepared under your supervision the statement of the cost of operating the Hamlet-Monroe truck to which he referred?

A. I did.

Q. Is the operation of that truck under your supervision?

A. It is.

Q. Will you state what costs that statement includes?

A. It includes gasoline, lubricants, tires, repairs, miscellaneous supplies, wages of the driver, licenses, insurance, taxes, depreciation, interest on the investment.

Q. The latter item at what rate?

[fol. 951] A. We figured on this operation the actual life of a truck——

Q. I am speaking of interest on the investment.

A. Six per cent.

Q. As far as your depreciation item is concerned, what period do those costs include?

A. The period of 56 months.

Q. Was the truck in operation at the time the figures were computed?

A. The period that this covers was the actual life of the truck from the day that it was put in service until the approximate date it was retired.

Q. Does the depreciation you have used include the salvage value of that truck?

A. It does.

Q. You have heard Mr. Terrell's testimony as to the size of the trucks which he would use. Are those trucks larger or smaller than the truck operated on the Hamlet-Monroe line?

A. Smaller.

Q. From your experience can you state whether it is more or less expensive—or, from your experience, can you state what relationship the size of a truck bears to the cost of operation?

A. The heavier the machine——

Q. I am speaking now of per mile costs, of course.

[fol. 952] A. The heavier the machine, the higher the cost per mile.

Q. Have you stated the cost per mile developed by that statement?

A. I have not.

Q. Well, will you do so, please?

A. 15.2 cents per mile, slightly plus.

Q. That includes the total mileage operated by the truck during its entire life?

A. That is right, it does.

Mr. Watkins: That is all. Just a minute—I do have another question.

By Mr. Watkins:

Q. That represents the expense of one truck?

A. Expense of one truck over a period of 56 months.

Q. The same truck?

A. The same truck.

Q. It is a straight truck?

A. No, it is a semi-trailer.

Q. What type?

A. General Motors.

Q. GMC truck and trailer?

A. Yes.

Mr. Abeles: I am now calling upon Mr. Rogers to testify——

(Discussion off the record.)

Mr. Abeles: The testimony which will follow from Mr. Rogers is general testimony applicable to all of the cases [fol. 953] covered by Docket MC 86687, sub. Nos. 2, 4, 5, and 6.

The Chairman: That is sub. Nos. 4, 5, and 6, consolidated with No. 2?

Mr. Abeles: Yes.

(General Testimony)

R. W. Rogers having been sworn, testified as follows:

Direct examination.

By Mr. Abeles:

Q. If in this and the other proceedings mentioned, the testimony purports to show that there is ample truck service now in operation between the points involved, and the suggestion is made that the applicant here could profitably and efficiently utilize such independent truck services for the purposes which they are seeking to accomplish through the establishment of coordinated motor and rail transportation service, what would be your observation in response to that suggestion?

A. That would be thoroughly inimical to the railroad's interests.

Q. Would it be a practical suggestion?

A. It would not.

Q. Will you explain why?

A. Well, in the first place the railroad would have to short-haul itself on a considerable volume of business, [fol. 954] to its own local stations.

Q. Go ahead.

A. No transportation agency that I know of, not even a truck, ever deliberately and willingly does that. For instance, Spencer Transfer on the Southern Railroad loads a merchandise car of LCL freight to break bulk at the Seaboard Warehouse at Charlotte for distribution through-

out the stations on the Seaboard Air Line Railway, local stations. Some of that——

Q. Between what points?

A. All points in the vicinity of Charlotte, from Charlotte to Rutherfordton, Charlotte to Hamlet, and even beyond. Now if we undertook to coordinate our service in turn with the trucking companies, and turned this business over to them at Charlotte, we would have the warehouse expense of handling this business at Charlotte, but we would give up all of our revenue on that that would be served by the truck lines. For instance, if the Southern in this case had a shipment destined to Monroe, North Carolina, under a coordinated plan this business might have to be turned over to the trucking company at Charlotte. We would give up all of our revenue, but still have the warehouse and terminal expense in Charlotte. Again, particularly on this Monroe-Rutherfordton line, there is a larger volume of station to station business than at any other points on my Division. For instance, Charlotte is a shopping center and originates business for some of these local stations. If we coordinated with the trucks, we would simply go out of the [fol. 955] merchandising business between Charlotte and those local stations.

Mr. Watkins: He is testifying about intrastate movement now between Charlotte and those points.

Mr. Abeles: Not necessarily.

Mr. Watkins: He is speaking about merchandise purchased at Charlotte for distribution on that line.

The Chairman: He is just giving that as an illustration, I think. He could probably make it apply to interstate as well as intrastate.

The Witness: I used the Spencer Transfer case as a typical case of what happened, because the Spencer Transfer business is largely through business that originates at a distance, such traffic centers as Cincinnati, Chicago, as well as eastern points.

The Chairman: That, of course, would be interstate movement?

The Witness: That is correct.

The Chairman: Proceed.

The Witness: The second reason would be that such an interchange arrangement would create a tremendous volume of accounting. As an illustration of that, we have a mer-

chandise package car from Chicago to Hamlet. In that car, breaking bulk at Hamlet Transfer, will be business for points intermediate between Hamlet and Monroe. If we [fol. 956] turn that over to the trucking line, you have a very peculiar problem there of what earnings or how would you deal with this small back-haul from Hamlet to the intermediate point over which the merchandise car had already traveled. There would be many illustrations of that kind.

Again, you would create a considerable additional accounting on your division of your freight claims, as well as on division of your freight rates.

Another important operating feature is that we would lose to a large degree our control over the flexibility of service. Unless these trucks were exclusively under our supervision, the railroad supervision, they could not control the schedule of arrival and departure. They could not satisfactorily and definitely coordinate the truck service with the rail movement, and we would defeat to a large extent the very purpose that we are trying to accomplish.

Another thing is that we would not have the close supervision over the character of service that these companies would render on business in which we would be interested, to our own local stations. We would not be able to supervise them, check the character of the service, or even take the disciplinary action we would with our own employees in case they fell short of a class of service we felt should be rendered.

Again, we feel it would open up our waybills and business [fol. 957] to local stations on our line, to a competing carrier, that would give an excellent opportunity for some strong adverse solicitation.

By Mr. Abeles:

Q. How would the cost of interchange between the rail line and the truck line, independent truck line, compare with the transfer between the rail line and its own operated truck service?

A. Well, that comes back to the question of control of service. With our own trucks and our own service, we could coordinate, with our rail schedules.

Q. I am not speaking now of the coordination feature, but the actual cost of the operation, of interchanging with the

trucks as compared with the transfer between our rail car and our operated trucks.

A. That is what I was trying to explain. On our own trucks, we can conform to or establish service without any extra expense other than the expense that would be incident to the operation of the rail cars, working them; but if with the private carriers we could not control their arrival and departure, we might be faced with two expenses, one station expense of handling the work in the merchandise car and at a later hour with other forces having to check to the outside carrier.

Q. Did you say check to the outside carrier?

A. Deliver to the outside carrier. Just how that would [fol. 958] compare, I just don't know.

Q. Where we transfer it from our rail car to our own operated truck line, do we have to check the contents of the shipment?

A. We do not. For instance, under a coordinated rail and Seaboard truck, we load the merchandise cars to what we term break bulk points. The truck opens those cars and loads its own freight. That is a Seaboard employee. We would not have to have any supervision there to arrange an interchange.

Again, on the truck passing a station at the time when—and I am speaking of the small one-man stations and no agency force on duty, he opens the warehouse, puts his inbound freight in the warehouse and loads the outbound freight without the necessity of having to have an agency force on hand to check; but if it was an outside independent trucking company, we would have to have, of course, some one on there to check and deliver this freight.

Q. That would be true at every interchange point?

A. That would be true at every station where this independent truck served.

Q. Mr. Rogers, if we were compelled to utilize independent truck services which is the underlying basis of our applications here, in your opinion will we ever undertake it?

A. We would not.

Mr. Abeles: That is all.

Mr. Watkins: Is that all of the testifying he is going to do?

[fol. 959] Mr. Abeles: Oh, no—on this general.

Mr. Watkins: I will reserve cross-examination. I have no questions at this time.

Mr. Abeles: I think that is contrary to the understanding that we had at the outset. Mr. Rogers will testify specifically upon the issues of public convenience and necessity in the proceedings which will follow, but this testimony is general and applies to all the cases which follow; and I think under the understanding and the ruling of the Examiner, the Chairman, I mean, when the cases were consolidated, the cross-examination on specific topics must follow immediately upon the direct examination.

The Chairman: Well, I'll tell you why I ruled that way. I will explain that to you. I did it in the interest of specific witnesses with reference to public convenience and necessity in the several cases. Now, I don't know that that is important in a general witness. That was the statement I made a while ago, where one witness is testifying with reference to a particular case. I think it is important that that evidence be consolidated, but as a general witness——

Mr. Abeles: May I interject a remark, that this witness' testimony on this particular subject, while it is true it applies generally to all cases, it differs entirely in its purpose and function from the testimony which he will give upon the issue of public convenience and necessity. And the rea- [fol. 960] son that I am urging that cross-examination on the testimony which he has just given be made now, is to avoid the confusion in the record which would result from the splitting of the cross-examination on this special subject, and placing it at a later point in the record. In other words, the reasons are identically the same as those which lead the Chairman to rule that cross-examination on specific testimony on the subject of public convenience and necessity should follow immediately upon the direct examination.

The Chairman: I think if these cases were being heard separately, of course it would have a different bearing on it, and to treat the testimony the way you propose, of course helps us to keep the separate entities of the cases as they are filed. I realize that that is true.

Mr. Watkins: Here is my whole objection to proceeding in this way, that is, I know exactly what is going to happen if I fail to ask a question now concerning this little segment

of Mr. Rogers' testimony and attempt at a later time in the case to ask a question involved in that. Mr. Abeles is going to object. What I would like to do is wait until Mr. Rogers has completed all of his testimony, then I will ask all the questions dealing with all of it, but won't be prejudicing myself by saying when I finish the cross-examination on this point that I will never hereafter refer to that again in cross-examination.

[fol. 961] Mr. Abeles: That position is no more prejudicial to you than the position in which I am placed by releasing this witness on this subject. I am not reserving the right to question this witness or any other witness on this particular subject again. I am closing my testimony on that. I am asking you to complete your cross-examination on this specific subject.

The Chairman: I am going to rule with the petitioner; in this case, you will have to proceed with the cross-examination.

Mr. Watkins: May I note an exception?

The Chairman: Yes.

Cross-examination.

By Mr. Watkins:

Q. You used some large word like inimical.

A. Inimical.

Q. Will you describe the difficulties you would have in dealing with independent truck lines? One of those you said was the question of the proration of rates, of the through rate. Could there be any difference in the difficulty of prorating the through rate through interchanging with a truck line and interchanging with another rail carrier?

A. Yes, because the same conditions do not exist.

Q. And they differ, how?

[fol. 962] A. We do not have any short-hauling of ourselves——

Q. I am talking now simply as to the question of the proration of the rates. That was one of the points you made.

A. Yes, I think there will be.

Q. How?

A. Because of the multiplicity of trucking lines.

Q. No one is suggesting that you interchange with hundreds of them, are they? Did you pick out just one?

A. No. There is no one trucking line that would cover any part of this territory, in toto.

Q. Are you sure of that?

A. To the best of my knowledge.

Q. Assuming that a truck line would cover a complete segment, one truck line, and you only had to interchange with one to accomplish it, would there be any difficulty in prorating the rate as with a railroad?

A. Yes. There is already an established system of rates and divisions among all of the rail lines. The waybills are reported, there is a system of accounting that has grown up over a long period of years in which the delivering line is held accountable.

Q. Are you talking about the prorating of the rates?

A. I am talking about that, and sending, with settling all previous accounts. If we turn over our business to an independent truck line, that trucking line would have to settle [fol. 963] exclusively with the Seaboard, and we would be responsible to all of the previous rail carriers for getting their money out of the trucking line. Whereas, if the railroad handled it, each railroad looks to the delivering carrier, but each railroad here would not look to the trucker, because they would have no part in the arrangement.

Q. Why could not the same rules be made applicable to a motor carrier?

A. Because there are so many motor carriers, separate motor carriers in existence.

Q. We were assuming you were only going to interchange with one in each division.

A. Of course, if there was only one carrier, one motor carrier handling exclusively for the North Carolina Division, that would simplify it.

Q. And if it was under the same rules and regulations, it would be the same thing?

A. If all of the carriers interested in the through waybills were agreeable, yes.

Q. And the same would be true as far as claims are concerned, if the rules were made applicable to motor carriers dealing with the railroad?

A. It would be the same thing, except unless you were dealing exclusively with one interchange, with one single trucking line, you would still have a multiplicity of trucking lines to deal with.

[fol 964] Q. My question was based on the assumption that there was one trucking line. You don't know anything about it?

A. No.

Q. Do you know of any provision of the Motor Carrier Act that requires a motor carrier to operate on a particular schedule?

A. I am not thoroughly versed in the Motor Carrier Act, but it is my understanding that your schedules are published and you adhere to them; of course, which we undertake to do.

Q. Have you ever seen a published truck schedule?

A. No.

Q. If it were so that the motor carrier could operate a truck at any time of day or night, out of any given point, would it be any more difficult in coordinating that with your existing rail schedules, than a truck line controlled by your railroad?

A. Yes.

Q. What?

A. Because the railroad would have the final say as to when that truck would operate, as long as it was a company owned machine; but with a private line carrier, you would have to have a mutual understanding and agreement with the private line carrier. And instead of being a matter for the exclusive decision of the railroad, it would still remain rather a matter for mutual understanding.

[fol. 965] Q. Is a truck line agreed to operate a truck from Henderson to Raleigh, leaving Henderson at 6:00 a.m. in the morning, arriving at Raleigh at 10:00 a.m. in the morning, and other schedules on that route, would there be any difficulty as far as schedules in interchanging with them rather than your own line?

(The question is read by the reporter.)

A. None, insofar as schedules, provided that was the schedule that suited the railroad's requirement.

Q. The schedule that I read is on your application MC 86687, Sub. 2.

A. There would still exist, however, the objections other than the operating features, that I have already mentioned.

Q. We are taking them up one by one. We know that you have got a lot of them. Now when these cars come into

your terminal, and it is transferred from that car to a truck line—to a truck, would the freight be handled over your platform?

A. As a general proposition, yes. There may be at times direct transfer from box car to box car at intermediate points, but if the transfer point is in the terminal, as a general proposition the transfer would be across the platform.

Q. Now, speaking of a transfer from rail car to truck, would that be across the platform at the points covered by these eight applications?

[fol. 966] A. In some cases it would direct from a car to the truck, at the terminals.

Q. Where would those be?

A. At some of the set-out points. For instance, at Lumberton, Wadesboro, Rockingham, to intermediate set-out points.

Q. If the independent truck line backed its truck up to the car, or to the platform, whichever service you are using at that point, would there be any difference in the cost of transfer to an independent truck line and to your own truck line?

A. Oh, yes.

Q. What?

A. Oh, I didn't hear your question—you said something I didn't hear what it was. The question would be in dealing with outside agencies of any kind, we must have a check of the freight that we deliver, just as we would to a consignee.

Q. You check the freight going onto one of these trucks?

A. No, sir, not on our own checks.

Q. You would not check it at the transfer point to determine whether it was there or not?

A. We check it, of course, into the car at the transfer point.

Q. You would not check it out of the car onto the truck?

A. At intermediate points, no, sir.

Mr. Abeles: What points?

The Witness: The intermediate break bulk points that [fol. 967] I mentioned a few minutes ago.

By Mr. Watkins:

Q. If you had an independent trucking company they would be responsible then, would they not?

A. Yes, we would certainly hope so.

Q. Then you would be protected?

A. No, there would always be a question of dispute as between the two companies, in case of any shortage or damage or claims.

Q. Not if you got a receipt for it?

A. You wouldn't get a receipt when there was no agency force on duty and the man was handling his own stuff.

Mr. Watkins: I think that is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, in connection with the inquiries of Mr. Watkins relating to the division of rates between a rail carrier and an independent truck line, it is true, is it not, that such divisions as would be made with such independent truck lines would cover service between points both of which were on the rail line?

A. Both local to the railroad.

Q. Both local to the railroad?

A. Yes.

Q. Now, I am going to refer now to a specific example. For instance, the route of rail operations, say from Charlotte to Rutherfordton. The Seaboard has a direct rail [fol. 968] route between those two points, has it not?

A. It has.

Q. Would it be possible, physically possible, for freight between those two points to be routed by the Seaboard from Charlotte to Shelby, there interchanged with the Southern Railway and transported by the Southern from Shelby to Rutherfordton?

A. It would.

Q. In such instance, do you know whether—in this instance and other like instances, of service between two points local to the same railroad, but between which it is physically possible to interchange with another railroad, does the rail carrier serving both points ever publish through rates in connection with the other rail carrier?

A. I have never heard of it being done.

Q. Is that tantamount to what the truck lines are now suggesting with reference to division of rates?

A. That is exactly my understanding of it.

Mr. Abeles: That is all.

Recross examination.

By Mr. Watkins:

Q. Does the Seaboard Air Line Railway publish rates into Charlotte, North Carolina, on connection with the P & N Railroad?

A. We interchange with the P & N through different interchange points. We do not publish through rates inter- [fol. 969] changing with the P & N at Charlotte. We do publish through rates interchaning with the P & N, and Pinoca.

Q. Shipments, in some instances, could either move all the way by P & N into Charlotte?

A. Under certain conditions, to certain consignees, a general proposition, yes.

Mr. Abeles: But where the point of origin and destination is directly served by the Seaboard, over a comparatively short distance, do you know whether we publish such rates in conjunction with another physically possible route?

The Witness: None that I know of.

Mr. Abeles: I wish to state that his (Witness Rogers') first testimony was in connection with Sub. 2.

(Witness excused.)

Mr. Abeles: I wish to call Mr. Stanley. This is general testimony, too.

The Chairman: All right.

W. L. Stanley was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Your name is W. L. Stanley?

A. Yes.

Mr. Abeles: I am calling Mr. Stanley for the purpose of offering general testimony applicable to the proceedings in Docket Mc 86687, Sub. Nos. 2, 4, 5, and 6.

[fol. 970] Q. Will you state your residence and occupation with the receivers and the corporation?

A. W. L. Stanley, Residence, Atlanta, Georgia, Vice-President of the Seaboard Air Line Railway Company, and Chief Public Relations Officer for the Receivers of that Company.

Q. Mr. Stanley, are you the official who has been closely associated with and responsible for the development of the motor carrier service performed by the Railway and its receivers auxiliary to its rail service?

A. I have perhaps been in closer touch with it than any one else. In developing this service, of course I have been subject to the directions of our receivers and have worked out these various plans in cooperation with other officers of the railroad.

Q. Then you are familiar with the general plan, policy and purpose of the railroad and its receivers in establishing these auxiliary services?

A. I am.

Q. Now, will you state in your own words what the plan, purpose and policy are?

A. For quite a while we have been studying the subject of coordinated rail and truck operations. That study proceeded from the theory that today, by land, there are three forms of transportation. One solely by rail, another solely by motor vehicle over the highways, and the third, a combi- [fol. 971] nation of rail and highway service, which in our opinion can only be rendered by the railroad. The purpose of the study and of the plans that we have developed, have been to coordinate rail and truck service. That is, in a very large degree to handle freight entrusted to us by the public, partly by rail and partly by truck.

In all of these operations which we propose, the major part of the business what we will do will be that that is handled partly by rail and partly by truck. Some of it, of course, will be exclusively by truck. We believe that under that plan we can speed up the traffic which the public gives us, and of course as a common carrier, we must accept and carry everything that is offered, and can refuse to carry nothing, provided the shipment complies with our rules and regulations.

We have all over the railroad and in this particular territory, large shipping points and stations at which freight is received from connecting lines, originating at various points in the United States.

I might illustrate that by saying that at Richmond, Virginia, we receive not only the freight that originates at Richmond, but also freight that comes to us through the Chesapeake and Ohio Railroad, from the Norfolk & Western, and from the Richmond, Fredericksburg and Potomac Rail- [fol. 972] road, from the east, Philadelphia, New York, and other eastern cities. At Hamlet Transfer, located in North Carolina, we have cars loaded by other railroads that come through the Birmingham Gateway from the west. They come from Portsmouth, Virginia, where we receive it from boat lines. That originates in Florida and all over the country; as a rule, at those transfer points, that freight, carload of freight, which I have just described, or those carloads of freight which I have just described, in railroad parlance, break bulk and they are distributed in cars that are destined to various points, some contiguous to the transfer stations and other remote from the transfer station.

Now, it was our theory that by handling that freight, which represents the major portion of our business, partly by rail and partly by truck, to destinations, that we could greatly expedite our service and that that would result in a benefit to the public. In addition to that, this scheme makes possible other economies in railroad service. As a rule, the local freight trains are operated to handle less than carload shipments from station to station. And at point of destination or at the point of origin, the freight is unloaded from the cars, or loaded into the cars by these local trains. That is part of the work of the local trains. In addition to that, they have carload business to set out at the smaller stations. They have industrial plants to switch, [fol. 973] and insofar as we are able to take from them the handling of LCL freight, the loading and unloading of it, the more time that they have to devote to the switching of industries, and to other work that they have to perform, thus expediting the movement of through cars. It has been the custom of the railroads for a great many years, as a rule, to operate their local freight trains in the daytime, under this scheme, and if these trains are relieved from the handling of less than carload business at the various stations, they can in many instances be operated at night, thus insuring the switching of industrial plants at times most convenient to the operators of them, and in picking up in a great many cases, carload business after

the close of the day's work at those industrial plants and expediting the movements of those shipments. That, generally, is the purpose that we have been seeking to attain.

Q. And are all or some of those purposes to be realized in all of the applications which are now before the Board in these consolidated proceedings?

A. Some or all of them, in practically every one of them.

Q. Mr. Stanley, I wish you would describe the experience which the Seaboard has had in the operation of auxiliary motor truck service heretofore?

A. The first service that the Seaboard established, as I recall it, for the handling of less than carload freight, [fol. 974] was about five years ago, between Hamlet, North Carolina, and Monroe, North Carolina, a distance, I believe, of about 54 miles. Subsequently—I am not sure that I state all of these in chronological order—subsequently, on January 1, 1935, we put on a service between Morriston, Florida, and Waldo, Florida. And at the same time one between Tampa, Florida, and Brooksville, Florida. Then we inaugurated a service between Drifton, Florida, and Monticello, Florida, a distance of four miles, paralleling a branch line railroad which we have between those two points. Then we put on one between Fernandino and Yulie, paralleling another branch line for about 12 miles, both of those points being in Florida. Then we established a service between Jacksonville, Florida, and Wildwood, Florida, and subsequently extended that from Wildwood to Tampa. Then the last service that I recall that we inaugurated about a year ago was between Rhine and Lyons, Georgia, a distance, I think, of 55 miles. The total truck service embraced in all of those operations which I have enumerated is 450 miles. That involves an experience of approximately five years.

Q. An experience of approximately five years, then, in the operation of this type of service, does it not?

A. Yes.

Q. Have the operations which you have just enumerated proven satisfactory for the purposes for which they were intended?

[fol. 975] A. Absolutely, and especially in the expediting of the movement of less than carload freight and carload freight to and from smaller stations.

Q. Are all of the truck operations which you have mentioned still in service?

A. Yes.

Q. Have any truck operations once instituted by the Seaboard ever been withdraw-, to your knowledge?

A. None that were inaugurated for the handling of freight. I think—well, as I recall it, during the time when we had a very few passenger trains, in order to relieve passenger trains stopping at smaller stations for handling mail and express, we did have on a truck from Norlina, North Carolina, to Hamlet, North Carolina.

Q. That is no longer in service?

A. I don't think so. It may be partly in service, but I don't recall it.

Q. Mr. Stanley, I am handing you the annual report of the Seaboard Air Line and its receivers, for the fiscal year ending December 31, 1936, will you state the railway operating revenues, the net railway operating income and the gross income shown on the income account on page three of that report?

A. The railway operating revenues for the year 1936, Seaboard System, were $38,346,055.37. The net railway [fol. 976] operating income, which is the sum remaining after the payment of operating expenses and taxes, was $2,920,582.99. The gross income for that year was $3,276,751.23.

Q. Is there any doubt, from what you have just recited, of the financial ability of the applicant here to perform the truck services which are proposed?

A. No, as is shown by these figures for 1936, we would have three and a quarter million dollars available for that purpose.

Q. From your experience, Mr. Stanley, do you feel that the truck services proposed by the Seaboard in these proceedings, will justify itself financially. And in answering that question, I should like to have you include in your answer your views as to the effect of these proposed services upon additional traffic which may or may not be derived from such services?

A. I haven't the slightest doubt, based upon observation and my study of this matter, but that these operations will be self-sustaining and add to the net operating revenue of the railroad. Of course, we hope that in addition

to the economies that will be effected, that this improved service of ours will attract to the rails additional business, and some of that which has been taken away from us by our competitors, highway independent trucks, in recent years. It is also my personal opinion that this will have [fol. 977] a tendency to some degree at least, to cause merchants who are now using their own trucks to abandon that use and to return to the rails, assuming, of course, that we can, as we hope and believe we will do, give to them a service that is equal to that which they are now obtaining by the use of their own trucks.

Q. Mr. Stanley, is it possible to show statistically in advance of actual experience the result in terms of net railway operating income of the operations of trucks over any specified route?

A. No, I don't think that it will be possible in advance, and very difficult to do it even after you have had the service in effect, for the reason that under our theory of this operation, this truck is simply an instrumentality of the railroad. Insofar as our operation is concerned, this is a railroad operation. These trucks are just the same as a locomotive or a car. Therefore, we keep our records and our accounts without undertaking to separate the revenue that would come from the truck, because after all, what we accomplish by their use will be reflected in one figure, namely, the net railway operating income of the property.

Q. And that figure embraces, I understand you to mean, all revenue and all expenses involved in the operation of both rail and truck lines?

[fol. 978] A. In other words, this statement that I just read to you here shows railway operating expenses for 1936, of $31,820,609.33. In that is included the cost of operating these trucks that I have referred to in my previous testimony, but there is no detail of that operation.

Q. I wish now you would refer to the suggestion that has been made of record in the cross-examination of witnesses, that we limit our application in these cases to the authority to transport in our trucks only traffic which has either theretofore or will thereafter receive rail transportation.

A. That would be absolutely impossible, unless by such an agreement we wanted to destroy the use of this facility which we are seeking authority to inaugurate. It would

be physically impossible. I will take this in illustration: The operation of a truck between Raleigh and Henderson. I think that is about 62 miles, and I am assuming that there is a shipment going first from Raleigh to Neuse, which is the first station north of here, north of Raleigh. How it will be possible to handle that shipment partly by rail and partly by truck, I can't conceive. I will take another instance, a shipment moving from Neuse to Franklinton. Now, if you would handle that shipment partly by rail and partly by truck, the railroad movement would be between two points, I don't know what points, and you would absolutely destroy the effectiveness of this operation and make it necessary to maintain both local freight [fol. 979] and truck service, a thing which we are trying to avoid so far as the movement of LCL freight is concerned.

Cross-examination.

By Mr. Watkins:

Q. Is it not the policy of the Seaboard Air Line Railway to parallel its rail service, all of its rail service with motor carrier service?

A. It is not.

Q. To what extent are you not going to do it?

A. I can answer that question by telling you that up to the present time, we have studied individual geographical situations to see what we can do by coordinating rail and truck service, and that at no time have we ever considered the proposition of paralleling the entire railroad with truck service, and I might say, Mr. Watkins, that in my opinion that will never happen.

Q. Mr. Stanley, you have no- pending before the Interstate Commerce Commission, eight applications, have you not?

A. I believe it is seven or eight.

Q. And those were prepared by you, were they not?

A. I prepared the applications, yes.

Q. And those applications in effect establish motor carrier service from Richmond, Virginia, to the South Carolina-Georgia line, and from Wilmington, North Carolina, to Rutherfordton, North Carolina, is that not true?

A. Considering them as a whole, that is true. Considering them in respect to their physical operation, it is not true.

[fol. 980] Q. But you are unwilling to have it stipulated in any of these applications that freight not be handled between any of those points except partly by rail and partly by motor carrier?

A. I am not willing that that be done, because I can conceive of instances, comparatively few, where it would be desirable to transfer freight from one truck service to another truck service.

Q. And wherever it is more expeditious or economical, you will do that?

A. I think so, yes.

Q. Thus, under these unlimited certificates, it would be possible to handle shipments from Richmond, Virginia, to Columbia, South Carolina, entirely by truck?

A. It would be possible, but hardly conceivable.

Q. And it would be possible to handle shipments between Richmond, Henderson, Raleigh, Wilmington, Hamlet, Monroe, Charlotte, Columbia, Rutherfordton, and Shelby?

A. In some instances it would be physically possible to do that, but the reason that that would not be adopted as a practice, is the fact that there is no form of transportation of which I have knowledge that is as cheap as rail transportation, provided you have the amount of business that will justify the operation of rail service. To go one step further, we would be perfectly foolish to handle a shipment by truck from Richmond, Virginia, to Columbia, [fol. 981] South Carolina, when we have a car moving in a through tonnage train between those points daily.

Q. Have you intrastate rights over all the routes which you are asking for interstate rights over?

A. Here?

Q. Yes.

A. No, sir, we have not yet secured them. I mean, you are speaking now in North Carolina.

Q. I am speaking of these four applications you are testifying about.

A. No, we have not yet obtained intrastate rights. We have filed application for them.

Q. Would you be willing to inaugurate these proposed services for handling interstate freight, only?

A. I don't know what we might do. My judgment would be that in order to make the service effective in the public

interest, it would be necessary to have authority to handle both classes of business, although in nearly every case that we have here, the majority of the freight that will be handled is interstate freight.

Q. But if such did occur, it would be necessary for you to classify your freight as to the type before you put it on the bill?

A. If we had no intrastate authority, we couldn't handle intrastate freight, that is all.

[fol. 982] Q. Now, what date did you start this service between Rhine and Lyons, Georgia?

A. What date?

Q. Yes.

A. As I recall it, Mr. Watkins, it was in the early summer of 1936, around about that time.

Q. Since June 1, 1935?

A. I may be wrong, it may be two years. As I get older, time goes faster. You may be right. It may be two years.

Q. Do you think it was before or after June 1, 1935?

A. If you say it was June 1, 1935, I will accept it. I have not looked it up.

Q. Mr. Stanley, I don't know as much about the Seaboard Air Line as you do. I am relying on you.

A. My recollection was that it was about a year ago. I may be wrong. It may be two years ago.

Q. Do you know whether you are handling interstate freight on that line?

A. We are.

Q. And you have not filed application with the Commission?

A. We registered that certificate.

Q. You stated that you had not kept any separate account for your motor carrier operation?

A. Correct.

Q. Then you are not prepared to testify as to whether [fol. 983] or not the motor carrier operations which you have put into service in the past or which you propose to put into service here have proven a profitable adventure?

A. Yes, I can testify that they have proven profitable, without being able to give you specific figures, because taking Rhine and Lyons, Georgia, that you just referred

to, I know that our business from Macon, and from Savannah, Georgia, has been increased as a result of that operation.

Q. And you attribute it to that operation?

A. To nothing else.

Q. Where did that traffic increase, that business?

A. Sir?

Q. Where was that traffic increased, that Georgia, diverted from?

A. It came from Macon, Georgia and Savannah, Georgia, I mean the rail movements were from those two points as far as the Seaboard was concerned.

Q. From what transportation agency was that increased tonnage diverted?

A. I have not the slightest idea. I know our business was increased.

Q. Do you know that was tonnage diverted from some other movement?

A. It may have been a private movement.

Q. Do you know of any merchant who has taken off his [fol. 984] private truck along the line you have established this coordinated service?

A. I don't recall the name of any at the moment.

Q. Do you recall the fact that any have done so?

A. No. If I knew the fact, I would know who the name was.

Q. But you do know that this service has caused additional traffic to move over your lines?

A. I know that it has increased our revenue between Rhine and Lyons, Georgia. I know personally that it has increased our business between Morriston, Florida, and Waldo, Florida, for the reason that, especially on fruits and vegetables moving from that territory, we are now able by truck to handle the traffic to Waldo, and there put it into a fast train, and expedite it by 24 hours, as compared to the service we formerly gave.

Q. There has been a general increase in all transportation business since January 1, 1935, has there not?

A. The swing has been upward.

Q. And has the swing on these lines where you have established this transportation been upward, greater than on the other branches of the railroad?

A. Yes, I think so.

Q. You think that the increase on your Rhine and Lyons division was greater than your increase on any other division?

A. No, I used that as illustrative; it may have been just [fol. 985] as great on the other lines, but I happen to have personal knowledge of what had occurred there.

Q. The Seaboard Air Line Railroad is a part owner of the Railway Agency, is it not?

A. It owns a very small amount of the stock.

Q. And you have an operating agreement with the Railway Express Agency, have you not?

A. Yes, sir.

Mr. Abeles: I have not the slightest objection to this type of questioning except for the fact that I can see no possible relevancy to the issues here involved, of any operations in express service, Mr. Chairman; and for the sake of excluding from the record extraneous matter, I object.

The Chairman: I ruled previously that the express operations on the line, to show that, is all right; but I don't think that the railroad officials are qualified to testify with reference to anything else about it.

By Mr. Watkins:

Q. You handle Railway Express business over all your lines, do you not?

A. Well, I won't say that we handle it over all our lines. I will answer your question by saying that we handle it practically over all our lines. There may be some isolated cases where we don't handle express.

Q. Generally speaking, the railroads, through the joint ownership of the express companies, maintain express [fol. 986] service over all of the lines of those railroads?

A. Yes, sir.

Q. And that express service moves in passenger trains?

A. Yes, sir.

Q. And generally speaking, that is more expeditious than service by LCL freight service?

A. That difference in the time of the movement is what differentiates the two services, except I think that you must remember I am not a rate expert—I think that express rates are, as a rule, higher than freight rates.

Q. Are they, or haven't the express companies published the same rates on LCL business as the rails have?

Mr. Abeles: I think that the questions are going beyond the scope of the Commission. I object.

The Chairman: The objection is sustained.

Mr. Watkins: This gentleman has been in the transportation field longer than any man I have ever had the privilege of talking to. He has been competing with truck lines, express companies, and air planes, and everything else, and if he doesn't know the general conditions in the transportation business, I don't know who does. And this case has in issue here the question of whether or not the present facilities for transportation are sufficient or not and unless we can go in and show the extent of the express service, I don't think the record will be complete.

[fol. 987] The Chairman: I don't think he is competent to testify with reference to that.

Mr. Watkins: He testified himself that he thought the express rates were higher.

Mr. Abeles: Yes, only because I didn't object.

Mr. Watkins: He volunteered that.

Mr. Abeles: I am objecting to your pursuing that line of inqury farther.

Mr. Watkins: May I note an objection?

The Chairman: Yes, sir. Objections sustained.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Abeles:

Q. One more question, Mr. Stanley. In your direct testimony, I neglected to ask you whether in the operations now conducted by the Seaboard Air Line and its receivers, and in the operations here proposed, is it the purpose of the railway to serve any stations other than those served by the rail lines?

A. Only those communities that are served today by our rail lines.

Q. If by chance the truck route traversed communities not served by rail, what would we do?

A. In the first place, in every instance, we almost parallel our railroads with our truck operations. In the second place, if we should get by highway away from the

[fol. 988] rail lines, we do not intend nor do we seek to serve communities that are not on our rail lines.

Mr. Abeles: That is all

The Chairman: Mr. Stanley, I have read here in the application the order of the Court appointing the receivers, giving them authority to go ahead with the operations. Is there a specific order of the Court authorizing such operations as we have before us, or would it be necessary to obtain additional information, I mean additional authority from the Court to do so?

The Witness: Mr. Commissioner, there is no order of the Court authorizing us to apply for or engage in this truck service. Answering your question further, it is my opinion that the general order of the Court directing the receivers to operate and conserve the property is broad enough to authorize them to do anything that may be necessary, in their opinion, in that connection.

Mr. Watkins: I overlooked one question.

The Chairman: Yes.

Recross-examination.

By Mr. Watkins:

Q. You are familiar with the Motor Carrier act of 1935?

A. I have read it, yes, several times.

Q. Will you please explain where in that Act you found a limitation on a motor carrier changing his schedule?

[fol. 989] A. I understood that the Act required, without referring to it specifically, for the applicant to file, as we did in this case, the schedules that he proposed to operate. It was my understanding that that schedule could not be changed without the authority of the Commission, because the only authority that we would obtain under our certificate, if I understand the law correctly, would be to operate under those schedules.

Q. And all of these applications were prepared with the idea that you would not institute additional schedules?

A. Sir?

Q. All of these applications were prepared with the idea that you would not institute additional schedules without further authority from the Interstate Commerce Commission?

A. We have no intention now of operating any additional schedules. If we find it is necessary in the public interest to do so, we shall apply to the Commission for that authorty.

Mr. Abeles: In the event, Mr. Stanley, that we find the law does not require us to secure additional authority from the Commission to place in operation further schedules, would we feel free to do so without applying to the Commission?

A. I am giving you my interpretation of the law, but I am not competent to pass upon it. I will say this, that we are going to comply with the law, whatever it is. I have [fol. 990] given you my construction of it.

(Discussion off the record).

Mr. Abeles: Mr. Chairman, there is one feature of importance upon which I want Mr. Stanley to testify, but with which he can't proceed until certain data which we have requested arrives. I should like, before the close of the consolidated hearings, to reserve the right to recall Mr. Stanley on that particular subject. It will not be lengthy.

The Chairman: Very well.

Mr. Abeles: We now offer in evidence the annual report to which Mr. Stanley referred.

The Chairman: It will be received as applicant's exhibit No. 1.

(Applicant's exhibit No. 1, Witness Stanley, is received in evidence.)

(Witness excused.)

The Chairman: We will take a five-minute recess.

(Whereupon a short recess was taken.)

The Chairman: We are ready to proceed.

Mr. Abeles: I am calling Mr. Rogers now to testify in Docket MC86687, Sub No. 6, the proposed operation between Monroe, North Carolina, and Rutherfordton, North Carolina, if the Commission please.

The Chairman: Very well.

[fol. 991] (Sub No. 6.)

R. W. Rogers having been sworn, testified as follows:

Direct Examination.

By Mr. Abeles:

Q. Mr. Rogers, is the route of the truck service proposed in this proceeding under your jurisdiction?

A. It is.

Q. And you will be responsible for its operation?

A. I will.

Q. Now will you describe the physical limits of the operation?

A. Between Monroe, North Carolina, and Rutherfordton, North Carolina, by way of Caroleen, back to Ellenboro, hence to Rutherfordton. Is there a more detailed explanation wanted?

Q. No. What is the distance?

A. The rail distance from Monroe to Rutherfordton is a 105 miles. With a short detour to Caroleen, the distance would be approximately a 112, or approximately that. We have a branch line from Ellenboro down to Caroleen.

Q. And the same truck will perform the main line and branch services?

A. That is correct.

Q. Now please proceed to describe the purpose which we have in establishing this operation and the benefits which will result from it.

A. The service is simply a movement by highway truck from one Seaboard station or depot to another Seaboard [fol. 992] station or depot on this route between Monroe and Rutherfordton. It will handle no freight except from those towns already given rail service on the route.

Q. Will it handle any carload freight?

A. It will handle no carload freight, but it will handle LCL freight that leaves partly by car and partly by truck. It will handle some freight that will move exclusively by this truck. To be perfectly frank about it, I think that this particular truck will perhaps handle more of that type of freight than on the North Carolina division.

Q. Now, when you speak of movement entirely by truck, you refer to movements between points, between Monroe and Rutherfordton?

A. That is correct.

Q. And not points beyond either of those termini?

A. That is correct.

Q. Have you stated the schedules of these trucks, Mr. Rogers?

A. I have not, but the proposed schedule is to leave Rutherfordton at 3:00 p.m., arriving at Monroe at 9:35

A. From the cotton mills, especially such places as Shelby, daily except Sunday and excepting legal holidays.

Q. Only one schedule each way per day is proposed, is it not?

A. That is correct.

Q. Now will you state the purpose we have in this service and the benefits to be derived from the operations

[fol. 993] A. There will of course be an improvement in the train movement which will permit us speeding up these train movements with the carload shipments by eliminating the checking of LCL freight at way stations. That will also help the trains in that some stops will be eliminated.

Q. Will that effect any saving in operating expenses?

A. Yes, there will be a saving of fuel by the elimination of the stops, and there will be some economy by the elimination of some over time on this district.

Q. I wish now that you would take specific movements of the several types that will benefit from this truck operation and explain how those benefits will result.

A. As to carload movement, our train number 96 is set up to leave Bostic yard at 4:00 p. m.

Q. Where is Bostic?

A. That is about 12 miles east of Rutherfordton. I can give you the exact distance in just a moment. (Continuing.) And to arrive at Charlotte at approximately 8:35 p.m. We cannot afford to leave Bostic yard earlier than 4:00 p.m. because this train will pass the intermediate points from Bostic to Charlotte before the receipt of the entire outbound load for the day.

Q. You mean from the——

A. From the cotton mills, especially such places as Shelby, Ellenboro, Cherryville and those points, particularly [fol. 994] though between Bostic and Shelby. The result is that we are having difficulty in getting number 96 into Charlotte to make connection with the outbound movement of carload shipments to connecting lines. I have in mind,

connecting with the P & N trains; and this carload movement—taking the month of March as an example, the month of May, 1937, as an example—is approximately 100 carloads of this movement.

Q. You mean now the carloads which are interchanged with connections at Charlotte?

A. At Charlotte. This is one particular interchange. Now to relieve number 96 of being tied down by this LCL, the trucking schedule will follow pretty closely the present schedule of 96, and let us advance 96 then to make the carload connections. We also have in the opposite direction a situation of that kind between Monroe and Charlotte without connections from the Seaboard Georgia division trains. We have switcher service leaving Monroe at 3:30 a.m., due in Charlotte at 4:30. If we are later than 5:30 a.m. making deliveries to connections, we will delay these carload shipments approximately 24 hours, because they will carry over for later schedules. There is some LCL freight between Monroe and Charlotte, Stouts, Indian Trail, Matthews, and Ramer, that if we handle on the truck as we proposed, will eliminate certain stops and enable me to insure the carload connections at Charlotte. Now as to the LCL freight, we [fol. 995] have a local freight leaving Charlotte, train No. 95, at 6:00 a.m. The departure of that train cannot be set up because it, too, must be held for the Monroe switcher that I just mentioned, so that carload shipments coming into Charlotte on that connection will be advanced. The result is, then, that the merchandise out of Charlotte and out of Hamlet, and out of Monroe, coming into Charlotte on train No. 87, at night, train No. 89 the evening before, gets into some of the local stations between Charlotte and Rutherfordton late in the day. Some of it is so late in the afternoon that it was not delivered and is carried over in the depot until the following morning. That means virtually the next morning delivery.

Q. The next morning delivery?

A. The next morning delivery, with this trucking service leaving Monroe at 12:01 a.m., picking up at Charlotte, thereby relieving——

Q. At what time?

A. Leaving Monroe at 12:01 a.m. and Charlotte at approximately 1:50 a.m. We will put the local station LCL freight in the depot at the smaller stations during the night

and No. 95 will reach the break bulk points such as Lincolnton and Shelby and Ellenboro early enough in the morning to insure a very prompt delivery of that business. As an illustration of what I mean, Monroe-Hamlet is what [fol. 996] I meant to say, loads a daily car for Lincolnton containing freight for stations immediately east and west of Lincolnton.

Q. You might state where Lincolnton is.

A. Lincolnton is intermediate between Charlotte and Rutherfordton, 32 miles west of Charlotte. We have a switches service at Lincolnton that does the switching work, the cotton mills and industries at Lincolnton, Cherryville, Stubbs, Stanley Creek, and after Lincolnton proper freight and the freight for delivery to the C. & N. W. Railway at Lincolnton is removed from the car, this is distributed by the Lincolnton switcher. The result is that for Stanley, or Iron, the business gets there in the afternoon. And under the truck program, business for Stanley, Cruse, and Waco, will be in the depot when those stations are opened up.

Q. Early in the morning?

A. Early in the morning. That generally is the program.

Q. Do we connect at Bostic with any foreign lines?

A. Yes. We connect with the Clinchfield or the C. C. & O.

Q. Will the proposed operation have any effect upon traffic interchanged with that line at Bostic?

A. I don't believe that insofar as the LCL freight is concerned, it will enable us to make any quicker delivery on account of the way schedules are breaking.

Q. Do you have a car that loads, or is loaded on Hamlet [fol. 997] which comes through to Bostic, Mr. Rogers?

A. Yes, we have, but that moves on a separate schedule that is not affected and would not be improved by this. Now we have another condition that is a very peculiar one, particularly on business out of Monroe. Conditions there are very similar in some respects to the Hamlet situation, except this, that the Hamlet business is through business that is previously hauled by rail service. We do have at Monroe a volume of LCL business that originates at that point. Now, under the present service, some of that business originating at Monroe is a second morning delivery, 48 hours delivery.

Q. To what points?

A. Such points as Stanley, Iron, Lattimore.

Q. You need not detail them. I meant were you referring to destinations between Rutherfordton and Monroe?

A. Between Rutherfordton and Monroe. There is also a movement——

Q. Before you go on, to make the record perfectly clear, will you explain why shipments of that sort originating at Monroe may take second morning delivery?

A. The conditions there are the same entirely as they were with reference to the Hamlet business. The Monroe, loads on Charlotte, Shelby, Lincolnton, Cherryville——

Q. You mean cars are loaded for those points, at Monroe?

A. Yes, that is correct. They are loaded to break bulk at [fol. 998] those points, containing freight for those stations and the stations immediately adjacent to it. There is also at Monroe a considerable volume of business that would move Monroe to Charlotte for delivery to connecting lines at that point. That is the Southern, the P. & N., and the Norfolk and Southern. Under the present schedule, this business very frequently does not make the interchange. It should, but the truck service, the delivery at Charlotte in time for this business to be worked, would be advantageous. As a general proposition, the Monroe-Charlotte business will be carload business, freight carload business.

Q. That benefit, I understand, will be from speeding up the schedules of your Monroe-Charlotte train?

A. That is right.

Q. Now, Mr. Rogers, will the proposed truck service over this route have any beneficial effect upon the traffic moving into this territory from points outside of it?

A. Yes.

Q. It will, as I stated, expedite the long haul business that now breaks bulk at Hamlet Transfer. It will speed up your train service and get the solid cars into these stations and out of these stations for earlier connections.

Q. Where does the traffic which comes to the Hamlet Transfer originate, generally speaking?

A. All over the United States. We have at Hamlet Trans- [fol. 999] fer, or rather we receive at Hamlet Transfer, merchandise cars from many of the larger merchandise terminals, Philadelphia, Richmond, Portsmouth, where we receive the business from the water carriers, Charleston, Wilmington, Atlanta, Greenwood, numerous places; in addition to this, we also receive at Charlotte, and will advance by this truck, LCL merchandise from Chicago, from Atlanta

to Southern Railroad transfer at Spencer, Greenwood, Monroe, Hamlet—I included the Atlanta to Greenwood. Of course, the Atlanta car would contain business that could come to Atlanta to the various connections there, including our Atlanta-Birmingham line.

Q. On this particular route, Mr. Rogers, you have an unusual number of local trains and services, have you not?

A. That is correct. The switching service, the carload movement originating and terminating in this territory is very heavy and it is a very complicated operation. We are trying to coordinate this business.

Q. Could you tell us the number of trains operated, local trains operated in this territory, including the switchers to which you have referred?

A. Well, I have two round trips of switcher service between Monroe and Charlotte, and in addition to two round trips of through service. Between Charlotte and Bostic, I have one round trip, each day, every day in the week, of through service, and one round trip six days a week of local service. At Lincolnton, we have what we call our Lincoln-
[fol. 1000] ton switcher which serves the territory between Stanley and Waco. At Shelby we have what we call our Shelby switcher that services the line from Shelby to Rutherfordton, and serves Caroleen branch, Caroleen and Henrietta branches.

Q. Mr. Rogers, you operate a truck service between Hamlet and Monroe, do you not?

A. That is correct.

Q. Will you give us the schedules of that operation?

A. It leaves Hamlet at 6:45 a. m., arrives at Monroe at 9:40 a. m.; and return trip, leaves Monroe at 10:30 a. m. arrives at Hamlet at 2:00 p. m.

Q. In scheduling your Monroe-Rutherfordton service, Mr. Rogers, has there been any effort or purpose in so arranging that schedule as to hook up with your Hamlet-Monroe service?

A. You mean the Hamlet-Monroe truck service?

Q. Yes, your Hamlet-Monroe truck service.

A. There has been no effort made to make a hook-up of that kind and there is none contemplated.

Q. Are your schedules such as to make it possible to carry through shipments by truck with reasonable expedition between points intermediate between Rutherfordton

and Monroe on the one hand, and points intermediate between Monore and Hamlet on the other?

[fol. 1001] A. No, sir. There would be more delay than would be the case with a coordinated truck-rail service, and that is a service that we would perform.

Q. You would make no effort then, I understand, to establish a through truck service between Rutherfordton on the west and Hamlet on the east?

A. No, sir. There would be no occasion for it.

Q. Reverting now to the number of local train services operated in the Rutherfordton-Monroe territory, are, or will the proposed truck service have a particularly beneficial effect in this territory in relieving those trains of the necessity of performing local deliveries?

A. Yes, particularly No. 96 in the afternoon from Bostic to Charlotte, and the Monroe switcher from Monroe to Charlotte, arriving at Charlotte now early in the morning.

Q. Have you made an estimate, Mr. Rogers, of the cost of performing this truck service?

A. I did not call it making an estimate, because we had actual figures of existing service, and could see no reason why that did not give an actual, practical basis for the costs.

Q. Those are the costs to which you have previously testified in this proceeding?

A. That is correct.

Q. Based upon that, will you state what in your estimation is your cost to perform this service?

[fol. 1002] A. The exact mileage just to a mile has escaped my memory; but there is practically 210 miles of truck service per day which at 15.2 cents per mile would make the cost about $35—$33 to $35 a day.

Q. And in a normal month, that would amount to what?

A. $858.00 a month.

Q. Mr. Rogers, if you set out to accomplish this expedition of train movement and elimination of local stops by your present train service by additional train service, what would be the relative cost as compared with the plan here under consideration? I don't mean in exact dollars and cents.

A. I should say it would cost, for just the out of pocket expense, $2600 a month; but to include the items that we also include in the trucking service, which was interest on

investment, depreciation, maintenance and so forth, the cost would be perhaps $5000 a month.

Q. As compared with your estimate of what?

A. $858.00 a month.

Q. Have you sufficient business now or in prospect to justify the operation of such additional train?

A. No, sir, other service would already be on. I have, as a matter of information, just added an additional crew in there trying to accomplish these purposes, but as I stated, we would not get No. 96 into Charlotte to make those con- [fol. 1003] nections, and to a considerable extent the additional expense has not been justified.

Mr. Abeles: That is all, Mr. Examiner.

Cross-examination.

By Mr. Watkins:

Q. I believe you testified that cotton piece goods were the main items that were moved on this service?

A. On the eastbound trip, that would be the main item on the eastbound trip. There would of course be some general merchandise, but the main purpose is the cotton piece goods and similar commodities.

Q. Do those commodities move on any quantity rates?

A. It is my understanding as a general proposition, they move on what we term a LCL rate.

Q. What is the usual size of shipments out of the mills?

A. They vary. Some of them are quite heavy. Some of them are quite bulky, without being so much weight; but generally it is pretty good tonnage.

Q. Approximately how many mills do you serve in that area?

A. I can't tell you offhand, but there is a considerable number.

Q. Approximately how many?

A. I can't give you the approximate number, even.

Q. Fifteen?

A. Yes, I would say as much as fifteen.

[fol. 1004] Q. As many as thirty?

A. I don't think so.

Q. Somewhere between fifteen and thirty?

A. Yes.

Q. And each of those mills ship daily?

A. Generally, yes.

Q. And they ship to various points in a single car, do they not?

A. That is right, we work those cars at our transfer points.

Q. Then what is the purpose of putting this truck service on to care for this cottonpiece goods?

A. There is a large quantity of the stuff that does not load at the mill. It is hauled to the depot. Shelby particularly is a heavy depot hauling point, so is the station at Caroleen. At those stations we create a car at the depot.

Q. Now, under this proposed setup, you wouldn't create that at the depot?

A. Such break bulk points, such as Shelby—I mean Cherryville, Lincolnton, Ellenboro, No. 96 would continue to pick up the merchandise that was available to it at the time it left. There is, however, a certain volume of this stuff that comes in after the departure of No. 96 that I am trying to protect, without unduly delaying No. 96. I am [fol. 1005] protecting it now with No. 96, but I am causing them some delay waiting for the late delivery.

Q. As I understand it, you do not propose to handle in this truck service shipments to or from Shelby and Lincolnton?

A. Only those that come to us after the departure of No. 96.

Q. It would be possible to eliminafe the truck service to those two points? Would it be possible to eliminate the truck service to those two points?

A. I don't think so. It would not be possible nor desirable nor advisable. So much of it is late.

Q. Because of the fact of taking care of late business?

A. That is right.

Q. That is the only reason for keeping the truck service into those two points?

A. That is correct. Wait a minute, now—don't misunderstand me. There may be some general merchandise in this to come in. Generally speaking, it is the CFB I am talking about, and that same thing would be true of Charlotte.

Q. What is that?

A. That same thing would be true of Charlotte. There will be some business going into Charlotte from local sta-

tions that we will load into the merchandise cars from Charlotte.

Q. There——

A. There may be some amount of it from local stations for Charlotte, proper, but there would not be any large [fol. 1006] quantity of it.

Q. How would a shipment from Indian Trial to Shelby move?

A. Under the proposed plan?

Q. Yes.

A. That would probably move all truck.

Q. It would not move into Charlotte, then, by rail and get into the Shelby car?

A. It is possible that we would take that allrail, depending upon just where it was in the truck. If we had to unload the complete contents of the truck at Charlotte to get to it, we might carry it on through and peddle it out at Shelby. We will load, though, at Charlotte a Shelby car as we now do, and ordinarily——

Q. That freight could move in that car, could it?

A. Ordinarily the freight from Indian Trial to Charlotte should move truck to Charlotte, and car from Charlotte to Shelby. I say it is possible, maybe, that for our convenience we might take it all the way through on the truck.

Q. That would also be true of the freight east of Charlotte to points, Lincolnton, Shelby and Bostic?

A. From east of Charlotte?

Q. Yes.

A. Now do you mean local between Monroe and Charlotte?

Q. Yes.

[fol. 1007] A. If that from an intermediate station, Monroe to Charlotte, for stations such as Lincolnton, Cherryville, Ellenboro, and Shelby, ordinarily the procedure would be that that would move to Charlotte by truck and be loaded out by car. There is a possibility that there might be an occasional shipment that would move all truck, but that ordinarily would not be good business to do it.

Q. Now, from the other direction, local points between Rutherfordton and Charlotte, moving to Monroe, what would be the ordinary way for those to move?

A. The ordinary way for that would be to go to Charlotte on the truck, and move from Charlotte to Monroe in a

package car on train No. 80 that night. There might be an occasional shipment that would go through just for operating convenience.

Q. Then, ordinarily, there would be no freight moving by truck service between points east of Charlotte and points west of Charlotte?

A. No, I didn't say that. I said that ordinarily, you mentioned Lincolnton, Shelby and those points, I said ordinarily freight for those particular points, those break bulk points, would move by car; but from one small intermediate point to another small intermediate point, it would move by truck.

Q. What percentage of the freight that moves on this line, moves to those break bulk points, as compared with [fol. 1008] the freight that moves to these small points?

A. I should say that around 80 per cent of it will be through business.

Q. That would move truck and rail?

A. That would move truck and rail, and maybe 20 per cent of it exclusively truck. That, however, is purely an estimate. I said in the beginning, the exclusive truck movement would run a little higher on this particular district than it does on any other one.

Q. Can you give us the tonnage moving in and out of these points?

A. I haven't it with me.

Mr. Watkins: I think that would be interesting, Mr. Chairman.

Mr. Abeles: You mean from station to station between Monroe and Rutherfordton?

Mr. Watkins: Yes.

The Witness: We keep no such statistics as that, purely from station to station, at all. It is possible to secure the tonnage from a station to a station, but just where it goes, I haven't got it. I couldn't get it.

Mr. Watkins: In some of these cases they have got that information, and in some others they don't have it. I don't know why it develops that way.

Mr. Abeles: Mr. Watkins, where we have had available [fol. 1009] the tonnage moving to and from the stations intermediate between the termini of the proposed truck service, that is carload; but we have not had a statement of

the tonnage that moves strictly between the intermediate points, locally.

Mr. Watkins: That was the statement you agreed in one of the cases to try to get up.

Mr. Abeles: No.

Mr. Watkins: Even if you can't get that up, I would like to see the exhibit that was put in on the operation between Henderson and Raleigh duplicated in this case.

The Chairman: That was LCL tonnage at each station?

Mr. Watkins: Yes, in and out.

Mr. Abeles: Regardless of the point of origin or destination?

Mr. Watkins: That is right.

(Discussion off the record.)

Mr. Abeles: Mr. Chairman, I didn't realize at the time I spoke that we have that statement requested by Mr. Watkins.

Redirect examination.

By Mr. Abeles:

Q. Have you that statement, Mr. Rogers?

A. I have a statement for the thirteen months period of February 1, 1936, to February 28, 1937, showing the less carload freight tonnage from and to the Seaboard stations between Monroe and Rutherfordton, including both Monroe and Rutherfordton.

[fol. 1010] Mr. Abeles: If counsel for protestants desire, I will offer this in evidence at this time.

The Chairman: That is offered as exhibit No. 2, and will be received in evidence.

(Applicant's exhibit 2, Witness Rogers, is received in evidence.)

Recross examination.

By Mr. Watkins:

Q. Does this statement cover cotton factory products?

A. Yes, it covers all business moving under LCL rates.

Q. And any quantity rates?

A. I presume so, including cotton and cotton factory products.

Q. And the majority of those commodities move to eastern markets?

A. Yes. There is some movement of it going to the bleacheries at points in South Carolina. Generally speaking, the cotton factory movement is to the eastern markets.

Q. This statement also includes inbound cotton?

A. No, a small quantity of cotton moving in broken lots; of course, carload going direct to mill where it is a solid car proposition, it does not include it. Where you have an occasional bale moving under a local bill of lading, it would be included in that.

Q. Some of these mills load solid cars of cotton and [fol. 1011] although it moves on LCL rates would that be included?

A. Cotton factory products, traveling on LCL rates, I think would be included in this.

(Discussion off record.)

Mr. Abeles: Are you through?

Mr. Watkins: Yes, I will say with this reservation, with the right to ask additional questions as they develop in the future.

Mr. Abeles: You mean as a reason for cross-examination?

Mr. Watkins: By direct or any other reason.

The Chairman: That is what he reserved a while ago, if the occasion demands.

The Examiner: There is a question I had in mind, in describing the movement from Charlotte to a point beyond one of your break bulk points or setout points, you stated that if the shipment were located in the truck so that the unloading would be difficult——

The Witness: That is right.

The Examiner: That it would therefore be advantageous to haul it on through on the truck rather than unload the whole truck and put it into a freight car?

The Witness: Yes.

The Examiner: I would like to ask this additional question, from a practical operating standpoint, considering the element of expense and possible damage claims, if [fol. 1012] you came to one of these points anywhere along this line, these break bulk points, one of these setout or break bulk points along this line, with a shipment in a truck

which was going on to a more distant point to which also a freight car would move, would not the cost of unloading and the possibility of damage claims by additional physical handling make any differences as to whether it stayed on the truck or was moved into the box car——

The Witness: Oh, yes. But the thing that controls the unloading of the truck to forwarding in the box cars, is generally the question of room. You have got to provide some relief for your truck. If you didn't, you would soon get it filled and couldn't take on any more. You have got to get it unloaded so you can forward it. That is the relief from the overload on the truck.

The Examiner: Now, if you don't have a heavy load on your truck, and it is moving anyhow to the points of destination, won't you, if it is more practical, more economical to leave it on the truck rather than load it into a freight car, run it on beyond a setout point on the truck?

The Witness: We probably would. We hope that our drivers and warehouse foremen have judgment enough to use good sound judgment in handling it. That is one reason why I did not definitely say that we would handle it one way or the other. But as a general proposition, on account [fol. 1013] of having to lighten the load on our truck, we will unload at these intermediate points and particularly at Charlotte.

Mr. Watkins: And if in order to accomplish this economy of operation, it was necessary to put on additional equipment, you would probably do so?

The Witness: We probably would.

Redirect examination.

By Mr. Abeles:

Q. In connection with the Examiner's question, Mr. Rogers, would the truck driver reaching a break bulk point at which he could either, at which as a physical matter he could either unload his shipment for trans-shipment by rail or continue to carry it by truck, could he not at that point, whether somewhere further along the line he would have what shipments he would have to pick up?

A. No, sir, not at always. Of course he would have a general knowledge of business, and for that reason he might elect to carry a small shipment that was only to go—

some peculiar circumstance—he would use his judgment in the matter.

The Examiner: That would depend largely upon your experience in operating?

The Witness: That is right. We hope to make it a practical operation.

By Mr. Abeles:

Q. Mr. Rogers, referring to exhibit No. 2, I understand that that exhibit shows the total inbound and outbound less carload shipments at the stations designated, does [fol. 1014] it not?

A. That is correct.

Q. Does that in any way indicate the volume of tonnage which would be handled by the truck serving these stations?

A. Not at all.

Q. Now, explain why?

A. Because many of these points would load solid cars, of course it would be LCL freight, but it would be a car from that station to a transfer point.

Q. Transfer point?

A. In some cases it might be a car from Shelby, to Charlotte, or from Shelby either to Portsmouth, Virginia, if they could have a reasonable tonnage for a through car, the agent has authority to load an extra car to the most distant available point where the tonnage justifies it.

Now, again, some of these mills will load at their plant to avoid hauling to the depot, carloads of this stuff traveling on LCL rates that will be billed direct to some transfer or break bulk point such as Hamlet or Portsmouth.

Q. Does this statement indicate in any respect how much of the less carload tonnage shown on it moves entirely within the territory intermediate between Monroe and Rutherfordton?

A. Not at all. It does not. It simply indicates the total LCL tonnage that originated or was loaded and forwarded from this station. Lincolnton, perhaps, had some LCL [fol. 1015] freight in that tonnage that came to us from the C & NW RR at that point. Certainly in this Lincolnton inbound business, there was some business to go to connecting lines at Lincolnton, but it was handled at that station. That statement does not indicate either the origin or destination of the tonnage shown.

Q. It does not?
A. Not at all.

The Examiner: Then that statement has no value whatsoever as a basis for any reasonable forecast of traffic which you may expect to handle entirely by truck in your contemplated truck service?

The Witness: No, sir.

Mr. Abeles: That is the reason I did not offer it, Mr. Examiner.

Recross examination.

By Mr. Watkins:

Q. Mr. Rogers, do you have a pickup and delivery service at this point?
A. Yes, sir.
Q. And an allowance in lieu thereof?
A. Yes.
Q. And when one of these mills loads a solid car at the mill, is the allowance given?
A. No, sir.
Q. No allowance is given?
A. No, sir.

[fol. 1016] Q. Then your mill customers would have the alternative of either loading a car at the mill and not receiving the allowance for carrying the freight to the depot and getting the allowance and having it move out by motor truck?

A. All of it, even that that comes to the depot, Mr. Watkins, will not be handled by truck because as I explained, No. 96 will move from these heavier points the business that is available and has been loaded at its passing time.

Q. So your customer will not have the alternative of moving it either by rail or truck?

A. No, sir. He simply turns it over to the Seaboard for the most prompt and best service that we have to offer.

Q. But by bringing the shipment to the depot after No. 96 has gone, it would move outbound by truck, would it not?

A. That is correct.

Mr. Abeles: He has no different arrangement with respect to allowances after this truck service is inaugurated than he has had heretofore, has he?

The Witness: Not at all.

Mr. Abeles: That is all, Mr. Chairman.

The Chairman: Very well.

(Witness excused.)

The Chairman: We will take a short recess at this time, gentlemen.

(Whereupon, a short recess was taken.)

[fol. 1017] C. H. Hasty was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Will you state your name, residence, and occupation, Mr. Hasty?

A. C. H. Hasty, Monroe, N. C., Sales Manager of Monroe Hardware Company.

Q. What is the business in which you are engaged?

A. Wholesale hardware.

Q. You say you reside in Monroe?

A. Yes, sir.

Q. Mr. Hasty, you then are residing on the eastern terminus of the Hamlet-Monroe truck service now operated by the Seaboard, do you not?

A. Yes, sir.

Q. Have you had experience with that service?

A. Yes, sir. It is the west terminus of this truck service we are located on.

Q. Has that service been of benefit to you, Mr. Hasty?

A. Yes, sir, it has.

Q. Will you please explain for this record in what respects it has been beneficial to you?

A. Well, of course, we ship in the radius of around 125 to 150 miles; and we have always had difficulty in getting shipments through the Hamlet transfer in that we would go [fol. 1018] up toward Raleigh, beyond Hamlet, up that branch toward the Wilmington branch, down the Wilmington branch, and down the Columbia branch. And when we put merchandise in the depot today, it was loaded that

night, and transferred to Hamlet the next day. Our customers would get it usually the following day, unless it was on the far end of the local freight run. Sometimes it was the fourth day before they would get it, before this truck service came on. So when they put this truck service on, we put merchandise in the depot today, and they take it to Hamlet this morning and it gets to our customers the next day, unless it is far away on the local branch, then sometimes it is the third morning; but usually it is the second day.

Q. Then do I understand you to say in the territory you serve, this truck service has generally saved you 24 hours in delivery time?

A. Yes, sir. I would say generally it has. I might say, too, for a time we were forced to ship by express. The express has a freight rate down to fourth class, but, of course, there is a lot of hardware that comes under fourth class, fifth, sixth, and special iron and steel rate. So we couldn't afford to ship by express; and consequently we lost quite a volume of business too.

Q. Those lower classes, of course, you could now ship by this truck service?

[fol. 1019] A. By truck service, but we still can't ship by express unless we make a freight equalization. And, too, the express won't take certain items at all now. They passed a ruling whether local or not, I don't know; but they won't accept heavy agricultural implements or any bulky merchandise that one man can't handle. Iron pipe, bar iron, and band iron and things like that, they won't accept at all.

Q. Mr. Hasty, have you found the truck service performed on the Hamlet-Monroe operation as reliable and satisfactory as that which is performed by rail?

A. Yes, sir.

Q. Have you had any loss or damage claims for merchandise shipped by truck, more than you experienced by rail?

A. No. I don't handle that end of it, but we have very little damage claims against any form of transportation now.

Q. Do you operate any truck yourself, Mr. Hasty?

A. Well, we don't ordinarily operate; but after the Seaboard put this truck on between Hamlet and Monroe, we have been trying for several months to get this same proposed route to Rutherfordton, because we have two travel-

ing men traveling that territory up there that have been traveling a long time; and we have no direct motor express lines up there. We have two motor express lines through Monroe that run to Charlotte, but we have no rail connections that we can get to points beyond Charlotte and the Southern Railway and Norfolk and Southern points. So [fol. 1020] we have been operating a truck to Charlotte daily for Southern Railway points and Norfolk and Southern points, Southeastern Express company, and the various motor expresses. We usually run on an average one truck a day, sometimes two and sometimes three.

Q. That is the only truck that you operate?

A. Yes, sir. I might say the reason we do that is to give service, because we have Charlotte as our competitors and we have got to get stuff through Charlotte. And set up as it is now, we can't do that. And the same applies to express shipments that applies to this other. We do ship by express, we are forced to, but we have to allow our customers the difference between the fourth class rate and the special iron and steel rate on nails, horse shoes, and things of that kind.

Q. Is that expensive?

A. Well, it doesn't amount to so much just for one shipment. Some customers will phone in for an order of maybe fifteen, 20, 30, or 40 pounds and add one, two or three kegs of nails to get a minimum freight shipment. And to get it to them in less than the third morning, we are forced to ship by express and allow them that difference, even small, in the rate which will amount in most cases, of course, it varies according to distance, will average about eight cents, from six to ten cents, about and eight cents average per 100 pounds.

Q. That is of some moment to you in volume shipments? [fol. 1021] A. Well, in a year's business, it is a good bit.

Q. In the proposed truck operation will it relieve the conditions to at lease a partial extent which now render it necessary for you to operate your own truck?

A. Well, the probabilities are that we will have to do some trucking to Charlotte any way. But we will be able to get merchandise to most of our customers the next morning, as I understand this proposed schedule. In addition we will not be forced to haul Southern Railway items and Norfolk and Southern items to Charlotte, and the probability is that we will get a lot more freight business by

being able to give better service. We have various customers in outlying territory that call for motor truck delivery on account of the rail service.

Q. Then this proposed truck service will perform the same function that you are now using your trucks for?

A. Well, yes, to a large extent. I think that as a whole on the railroad points that the service will be better, but on motor lines, of course, the service will be the same.

Q. When you say the motor lines, what do you mean?

A. The regular franchise motor expresses that operate out of Charlotte, the one we haul, too.

Q. You are not referring now to points on the rail lines?

A. No, sir.

Q. As to those points, you say the proposed service will [fol. 1022] largely replace your own truck service?

A. It will replace it almost entirely as far as hauling to Charlotte is concerned, because up the Seaboard to Rutherfordton there, it is right on a direct line from us, but we have been missing a lot of that business on account of the service and we hope that if this gets in, that maybe it will increase our business to some extent. But it will enable us to ship all rail from Monroe instead of having to haul to various points on the Southern Railway, principally.

Q. Is there any through truck service now operating from Monroe to Rutherfordton, or to points between Charlotte and Rutherfordton to your knowledge?

A. I don't know about Charlotte to Rutherfordton. There is not from Monroe to Rutherfordton. There are two motor expresses that come to Monroe, but one stops at Charlotte, and the other, I think, goes southwest and south. There might be a motor express beyond Charlotte, I don't know that. The two that come through Monroe do not go that way.

Q. Mr. Hasty, what has been your experience of shipments by truck to Charlotte for points beyond Charlotte? I don't mean the quality of service, but I'm referring to the way the shipments move?

A. You mean speed?

Q. Yes, how do the independent truck lines handle shipments made by you to points beyond Charlotte, insofar as you use those truck lines?

[fol. 1023] A. Well, as a rule when we ship by truck from Monroe, we just pay them to haul it to Charlotte, a freight rate, Monroe-Charlotte rate; then it originates with the

various motor express lines and express lines, Southeastern Express and the railroads there.

Q. That is an independent operation beyond Charlotte, is it so far as you know?

A. Yes, you see the P&F and Miller Motor Express Company comes through Monroe. We ship by Fredericksoa, M&M, Helms, and maybe one or two others. I think there are smaller independent lines that I can't recall now.

Q. Is there usually any delay at Charlotte?

A. Well, most of the time there is not, but sometimes they don't usually make delivery in the afternoon. They are supposed the pass Monroe—the P&F handles most of our merchandise going up—they are supposed to pass Monroe around nine or ten o'clock in the morning. When they pass at that time they usually get it to the expresses that afternoon. But, of course, lots of times they don't run on schedule, and in those cases they usually miss.

Q. I understood you to say, Mr. Hasty, that you hoped that the proposed truck service would to a certain extent open up to you the territory between Charlotte and Rutherfordton, was that correct?

A. Well, it wasn't exactly that. We are getting a nice [fol. 1024] volume of business out of there now; but it is causing an additional expense to give service to our customers by rail, to haul to Charlotte and allow the difference in rate from the regular railway express and freight.

Q. You ship to that territory largely by express?

A. We ship a lot. We have a special crew to come on at six o'clock in the morning to enable us to get today's merchandise off by railway express. That leaves Monroe by ten o'clock.

Q. That is, I understand, because you have to compete with Charlotte competitors?

A. Yes, Charlotte, Winston, and Greensboro.

Q. Who can get into this territory more quickly than you can by all rail?

A. Yes, sir. That is not altogether the territory up the Seaboard, that is, Monroe to Rutherfordton.

Q. I'm speaking only of that territory now.

A. We expect to be able to give rail service over to Newton and Hickory, over there where we are having to ship Southeastern Express or Motor Express.

Mr. Abeles: That is all, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. Mr. Hasty, when does the train leave Monroe for Charlotte?

A. Passenger train?

[fol. 1025] Q. No, the freight train that you ship on.

A. We don't ship on the freight train. We ship by railway express and the balance of the stuff we haul to Charlotte by our truck.

Q. You don't know what the rail schedule is at Monroe?

A. It leaves sometime at night. But these intermediate points beyond Charlotte, if they load at Lincolnton or Shelby, they go up that night; and the local, at these various points, provided there is enough of it, switches it back and forth. But there is not a very large volume of it now on account of the service, that we just can't ship that way.

Q. Shipments leaving at night or late afternoon, you put them in the depot in the late afternoon, and they would be up in that territory around Lincolnton the next day?

A. Well, not for the local points. If there is a sufficient load for them to load, a set-off car for Monroe, it will. I think they ask us to have two or three thousand pounds before they will load a set-off car for small points.

Q. Your freight is not the only freight?

A. No, it certainly is not, but it is a good part of it for Monroe.

Mr. Watkins: That is all.

Mr. Abeles: That is all, Mr. Chairman.

(Witness excused.)

Mr. Abeles: That closes our case in Docket No. 86687, [fol. 1026] Sub. No. 2. I would like to move that the evidential parts of the application in this proceeding be considered as evidence.

The Chairman: Without objection that will be admitted. We will adjourn now until 9:00 o'clock, in the morning.

(Whereupon, at 5:15 o'clock p.m., June 15, 1937, the hearing adjourned until 9:00 o'clock a.m., June 16, 1937).

[fol. 1027] N. C. Utilities Com., Raleigh, N. C.

June 16, 1937, 9:00 o'clock, a.m.

The Chairman: We will proceed, gentlemen.

Mr. Abeles: Mr. Chairman, we would like to take up the application covering the route from Hamlet to Wilmington, Docket No. 86687, Sub. No. 5.

R. W. Rogers having been sworn, testified as follows:

Direct examination.

By Mr. Abeles:

Q. You are the same Mr. Rogers that has testified heretofore in these proceedings?

A. I am, in these consolidated proceedings.

Q. In these consolidated cases?

A. I am.

Q. Mr. Rogers, you are proposing, I understand, to establish auxiliary truck service between Hamlet, North Carolina, and Wilmington, North Carolina, are you not?

A. That is correct.

Q. Will you describe the limitations of that service where Hamlet and Wilmington are with relation to the Seaboard system?

A. We have a direct line from Hamlet to Wilmington, a distance of 110.8 miles. We propose to establish truck service, that is from one Seaboard depot to another depot, only, handling business moving on Seaboard bills of lading [fol. 1028] and way bills.

Q. Does the highway which the truck will use closely parallel the rail lines?

A. Right across, very closely, yes, sir. We serve no businesses, no towns, that we do not now serve by rail lines, and we serve those towns under this truck application only from existing depots.

Q. Now, will you proceed to describe the purpose of establishing this service?

A. This is to improve both LCL, or merchandise movements, and to improve the carload movements. At the present time we have two through trains each day, from Wilmington to Hamlet.

Q. Do you mean two trains in each direction, or one train in each direction?

A. I'm speaking now only of the westbound movement. I will speak of the eastbound in a few moments. One of these is an oil train, primarily freight trains, for gasoline and oil, leaving Wilmington at two-thirty a.m. That schedule is extremely fast, on account of having to make connections at Hamlet with the other through trains. Our general business train out of Wilmington is No. 77, which is scheduled to leave Wilmington at 8:00 p.m.; handling the merchandise. We find it difficult to get No. 77 into Hamlet to connect with No. 88, and No. 80, the northbound train.

Q. Do you mean trains northbound from Hamlet?

[fol. 1029] A. Where: From Hamlet, the Charleston line and the Cheraw line trains. This trucking service will relieve No. 77 and enable us to make this connection.

Mr. Abeles: Let me interrupt there, Mr. Rogers. What time do you have to reach Hamlet in order to make the connections you refer to?

A. We have to be there by 3:30 a. m. to make certain of these connections. We do not always make them. We propose a trucking service to leave Wilmington at 7:00 p. m., arriving at Hamlet at 12:30 a. m. That relief will materially help No. 77.

Q. Do you think that it will assure the arrival of No. 77, to make northbound connections to which you refer?

A. Yes, it will. It will enable us to accom-odate some loading at Wilmington, because we now frequently meet the request that our closing hour for departure on No. 77 at Wilmington to assure the forwarding on No. 77, is too early. We meet with frequent requests to hold No. 77 for special cars and special movements, where they have rush orders. For carload business, I'm speaking of. Now, in the opposite direction——

Q. Before you reach the opposite direction, how many local stops are there between Wilmington and Hamlet?

A. About 24.

Q. You have not yet stated, Mr. Rogers, what time your truck leaves Wilmington, have you?

[fol. 1030] A. Yes, I said 7:00 p. m., arriving at Hamlet at 12:30 a. m.

Q. That is the same hour for the scheduled departure of No. 77, is it not?

A. Yes, the same.

Q. Now, you referred to the reverse movement.

A. The reverse movement, I have one through train each day from Hamlet to Wilmington, leaving Hamlet at 8:00 p. m., arriving at Wilmington at 8:00 a. m.

Q. That is No. 78?

A. I mean 1:00 a. m. That is No. 78. In addition to that service, I have daily except Sunday, a switcher or local service leaving Hamlet at 9:00 a. m., arriving at Lumberton at 1:30 p. m.; and a second service from Lumberton to Wilmington, leaving Lumberton at 12:01 p. m., arriving at Wilmington at 5:00 p. m. No. 78 carries from Hamlet transfer, merchandise cars for Laurenburg, for Lumberton, Penbroke, sometimes for Bladenboro, and for Wilmington. These cars contain freight for those specific stations and the stations immediately nearby.

Q. Mr. Rogers, in discussing the eastbound movement, you did not refer to any cars loaded at Wilmington for points intermediate between Hamlet and Wilmington. Are there any such cars?

A. Yes, Wilmington now loads a car for Lumberton, a car for Hamlet and then a car for intermediate points [fol. 1031] between East Brook and Old Hundred. In other words, for all local stations except Lumberton. Now the Lumberton car——

Q. Are you speaking now of the east or westbound movement?

A. Eastbound movement. The Lumberton car sets out at that point. The Hamlet car sets out there, the other is worked at intermediate points.

Q. Now, will you describe the various types of service now performed over the Hamlet-Wilmington line which will be affected by the proposed truck service?

A. As I stated first on the eastbound movement, we will advance No. 77. For the eastbound movement, that is largely the benefit that we will derive; and from an operating standpoint, that is a very substantial benefit. I beg your pardon, that was the westbound movement I was speaking about where No. 77 will be expedited. The LCL on the westbound movement will not be materially improved.

Q. You are already making——

A. We are already making overnight movement on that. In addition to that, of course, Bladenboro, Lumberton, generally Pembroke, Maxton and Laurinburg, originate car-

load LCL freight, which is moved in by No. 77 for Hamlet transfers.

Q. There will be no change in that particular service? Will that traffic continue to be loaded on cars?

A. Oh, yes, that will continue to move on cars, because of the volume and because we make the connections with [fol. 1032] it, where the volume is too great for us to undertake by truck movement.

Q. No. 77 will continue to stop then at those points?

A. Yes, No. 77 will continue to stop at every point where there is carload business to or from. Eastbound it will materially advance business from Charlotte and Monroe. At the present time business from Monroe for this line, leaves Monroe at approximately 10:00 a. m.

Q. Let me interrupt there to ask whether there is a substantial movement to this territory from Monroe?

A. Yes, there is.

Q. In this?

A. Yes, the less carload business from Monroe is very heavy. The Monroe Hardware Company is perhaps the largest Hardware concern between Richmond and Atlanta. They handle tremendous tonnage.

Q. Is that the concern represented by Mr. Hasty, who testified in these consolidated proceedings yesterday?

A. Yes, that is true. He is the man. There is considerable business leaving Monroe that has to leave there by 10:00 a. m., under existing service, to make connections with the cars that we now load for No. 78 leaving Hamlet at 8:00 p. m.

Q. I beg your pardon. I didn't get that time of loading.

A. 10:00 a. m. In addition to this there is considerable volume of business from Charlotte that originates at Charlotte and that comes to us in through cars from other lines [fol. 1033] that break bulk at our depot.

Q. At Hamlet?

A. No, at Charlotte. Under the existing schedules, the business reaches Hamlet at around 3:30 a. m. and stays at Hamlet for No. 78 at 8:00 p. m. We are planning a revision of our carload service coordinating with this truck. That will let us take the complete day's loading, leaving Charlotte then at about 6:40 p. m., Monroe at about 8:00 p. m., arriving at Hamlet approximately 9:20 p. m., where this car, or cars, will be worked for forwarding on the

truck leaving Hamlet at 1:30 a. m. That will have the effect of taking 24 hours out of our existing schedule. In addition to that it will give us the complete day's loading at a number of points.

Q. On the Charlotte-Monroe territory?

A. That is true. Now Hamlet will continue to load in merchandise cars for No. 78, that they now load, such as Laurinburg, Maxton, Lumberton, because of the volume.

Q. As to those cars, then, there will be no expedition of service from this truck operation?

A. None at all.

Q. You are not then proposing to revise your Hamlet-Wilmington train service?

A. Not at all.

Q. Have you referred to traffic, less carload traffic, moving from northern points, such as Richmond, through our [fol. 1034] northern connections north of Richmond, into Hamlet, consigned to the Hamlet-Wilmington territory?

A. The bulk of this business now reaches Hamlet, transfers on trains 89 and 85, southbound trains. That business will continue to move on those trains and be worked for forwarding in the existing merchandise cars. However, No. 87, which is scheduled to arrive at Hamlet at approximately 5:15 p. m., does not work for an eight o'clock departure. The time is too short to break No. 87 and get the cars to the house, and get them out, by No. 78. Under this proposed schedule, though, the Hamlet merchandising car arriving on No. 87 from the east will be worked and such freight as it contains for the Wilmington lines will go forward that night, cutting 24 hours out of the service.

Q. In other words, you have five hours and a half more loading time to catch your truck than you have to catch your train No. 78?

A. That is true.

Q. Will there be any saving in fuel expenses by elimination of local stops by trains No. 77 and 78?

A. Yes. The number of these stops that will be eliminated is, of course, guess work. The dispatchers, in discussing it with them, feel that we should eliminate an average of six stops each night, at stations where this train would not also stop to handle carload business.

[fol. 1035] Q. Is that in both directions?

A. Yes—no. Yes, that would apply both to No. 77 and No. 78.

Q. Then you would say a total of 12 stops?

A. As near as we can estimate it, that would.

Q. How much do you estimate will be saved in fuel expenses from the elimination of these stops?

A. That is a difficult proposition. The estimates that are made vary by location, the length of your train, grade, and it will run, I should say, from $1.50 to $3.00. It is a most difficult thing to definitely determine.

Q. A minimum of $1.50 under the most favorable conditions?

A. Yes, that includes overtime and fuel, and those items. There are many factors that have to enter into the question of what it takes to stop a train.

Q. Have you any estimate of the cost of this truck operation?

A. Our past experience has been that it will cost us approximately 15.2¢ per mile *vocering* all expenses, including depreciation, interest, up-keep, wages, gasoline, oil, and so forth.

Q. You have already testified to the details of that cost estimate which, I understand, is estimated upon your Hamlet-Monroe experience?

A. That is correct.

Q. Now, using that as a basis, what is your estimated cost of this truck operation?

[fol. 1036] A. About $35.00 a day.

Q. That amounts *ot* how much a month?

A. $910.

(Discussion off the record.)

By Mr. Abeles:

Q. Mr. Rogers, will one truck be able to perform the services in both directions on this route?

A. Yes, sir.

Q. Where will this truck originate, Hamlet or Wilmington?

A. Wilmington.

Q. And your crew will have a 13-hour layover, will they not?

A. At Wilmington?

Q. No, at Hamlet?

A. No, sir. We have approximately an hour.

Q. I beg your pardon, a one hour layover. Are there any foreign rail line connections at points intermediate between Hamlet and Wilmington?

A: Yes, we have important connections at Lumberton and Laurinburg.

Q. Will you mention the roads in connection with the points?

A. At Laurinburg with the L&S, at Alma with the Maxton-Alma Southbound, at Pembroke with the Coast Line. There are some other connections, but those are the ones that are most important.

Q. Will the proposed truck service affect in any way the movement of receipts to and deliveries from these connections?

[fol. 1037] A. It will advance business going to those lines, reaching Hamlet on No. 87, and it will advance the business to those lines that originate at Monroe and Charlotte territory, just at it does to our own local stations on that line. The principal interchange of LCL is at Laurinburg and——

Q. With what line?

A. The Laurinburg Southern and at Lumberton with the V&CS, I believe that is the name of it.

Mr. Abeles: That is all, Mr. Chairman.

Cross examination.

By Mr. Watkins:

Q. Are you planning to use only one crew on this truck?

A. That is an operating detail that we do not yet know, but the cost is set up to cover two men, because, under the present service, our 15.2¢ is based upon an operator 104 miles.

Q. Does that truck have just one man on it or two?

A. The present truck has one.

Q. This truck has two?

A. As it will be a night operation, it is possible that there will have to be a helper.

Q. Are you figuring on two crews or one?

A. As I say, that is an operating detail I don't know what our experience will be. He will have twelve hours rest at Wilmington, and whether or not it would be more profitable to have one crew to make a round trip, or how the relief will

[fol. 1038] be worked out, that is a detail we have not yet considered. We simply set up in our estimate of the cost what we expected was enough expense to cover that.

Q. Those two men would be on duty from 7:00 p. m. to 6:45 a. m. the next morning?

A. If they made the round trip, yes, sir.

Q. You are only planning to use one truck?

A. One truck.

Q. You would eliminate this local car that is loaded for these intermediate points by this truck?

A. Yes, we will have that one saving. We will not eliminate the present set-out cars that I have mentioned.

Q. At Lumberton?

A. Lumberton, Maxton, Laurinburg, and Bladenboro. In fact, we make set-out cars for any point when there is sufficient tonnage to justify it.

Q. Now, the purpose of the Seaboard Air Line Railway is to advance schedules in handling freight, is it?

A. That is correct and to effect some operating economies.

Q. And wherever it is possible to advance the movement of less than carload freight by the use of truck service, you intend to do so?

A. That is correct, yes.

Q. Now, your proposed service would leave Wilmington at 7:00 p. m. at night and arrive at Hamlet at 12:30 a. m.?

[fol. 1039] A. That is right.

Q. And you are also proposing a service leaving Hamlet at one a. m. and arriving in Columbia, South Carolina, at 6:10 a. m. by motor carrier?

A. That is correct.

Q. And a service leaving Hamlet at 1:30 a. m. and arriving at Wilmington at 6:45 a. m.?

A. That is correct.

Q. Thus there could be a continuous truck movement overnight between those points?

A. Yes, sir, there could be.

Q. You are also proposing a loop service, serving Hartsville, Sumter, Bishopsville, and towns in that vicinity, which leaves McBee at six in the morning?

A. There is some service proposed over that route. Just the exact schedule, I don't know. I was not in the hearing at Columbia when that was explained.

Q. Your truck from Hamlet to Columbia reaches——

Mr. Abeles: Just a moment, Mr. Chairman. I had not objected to the line of inquiry because I was waiting to see where it was to lead. I think we are again getting into the same exploration of services not involved in this proceeding, as to which there was not testimony on direct examination. I think your Honor has heretofore ruled, that in view of the setup of these hearings, they should be considered [fol. 1040] as separate proposals, and that the question now being put is improper.

(Discussion off the record.)

(Question read by the Reporter at the request of the Chairman.)

The Chairman: Having heard the Hamlet-Columbia case, I think some similar question was asked and answered there. I have forgotten by which side, so I'm going to let the witness answer. Just as a mere matter of form in the record, I can't see that it affects it materially.

By Mr. Watkins:

Q. If you are proposing a truck service which leaves McBee at 6:00 a. m.——

Mr. Abeles: Just a moment, the witness has stated he knows nothing about the McBee-Sumter service, isn't that correct?

Mr. Watkins: I asked him if this was proposed by the Seaboard. I didn't ask him if he knew anything about it, because I know from past experience that one Division Superintendent has never come in contact with anything else except his Division.

Mr. Abeles: Very well, why did you ask the question then?

By Mr. Watkins:

Q. If the Seaboard Air Line is proposing a service that leaves McBee at 6:00 a. m. in the morning and reaches Hartsville and Sumter before 8:15, would it be possible for a shipment to leave Wilmington at 7:00 p. m. in the evening and move over those three operations, reaching those points in the morning?

[fol. 1041] A. Yes, that would be possible.

Q. You are proposing a service, leaving Wilmington, North Carolina, at 7:00 p. m., arriving at Hamlet at 12:30

a. m. You are proposing a service from Raleigh to Hamlet, leaving Raleigh at 7:30 a. m. and arriving at Hamlet at 2:00 a. m.?

A. What is that, now?

Q. Just a minute. You are proposing a service leaving Wilmington at 7:00 p. m. and arriving at Hamlet at 12:30 a. m.?

A. That is correct.

Q. And you are also proposing a service leaving Hamlet at 2:00 a. m. and arriving at Raleigh, North Carolina, at 7:30 a. m.?

A. That is right.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Abeles:

Q. Mr. Rogers, what is the schedule of your Hamlet-Monroe truck?

A. In which direction?

Q. From Hamlet to Monroe?

A. It leaves Monroe at 6:45 a. m.—leaves Hamlet at 6:45 a. m., and arrives at Monroe at 9:40 a. m. It returns, leaving Monroe at 10:30 a. m., arriving at Hamlet at 2:00 p. m.

Q. Taking the eastbound movement, would you use all truck service between points on the Hamlet-Wilmington route, on traffic moving from that territory to points be-
[fol. 1042] tween Hamlet and Monroe, westbound?

A. Under our proposal, there would be very little of this, because our Monroe business, as I stated, now has to be delivered at the depot by 10:00 a. m., that is for a truck movement. Under our revision of train service, at the time this truck service goes in we will have train service out of Monroe that will give us an entire day's loading and that train service should normally carry about 95 per cent of that business.

Q. You described the eastbound movement, did you?

A. That is correct.

Q. Now, this revision of train schedules from Monroe to Hamlet, then appears to be an effort to adjust your train service in order to coordinate with the truck service, is that correct?

A. That is correct, and improve the merchandise movement out of the Charlotte-Monroe territory, particularly.

Q. Now, on your westbound traffic from the Wilmington-Hamlet territory, to the Hamlet-Monroe-Charlotte territory, what is the relationship between the two truck services on those respective services or routes?

A. It would be so incidental that we do not give it material consideration at all. There may be some business moving from a local station on the Wilmington line, for instance, to a local station on the Monroe line that would move entirely by truck; but there is practically no such [fol. 1043] business. The majority of the business that the Monroe truck handles and the majority of it that it will continue to handle is business that will reach Hamlet by rail cars.

Q. I see. Take a movement from out of your non-car points on the Wilmington line?

A. Shipments from Councils, if there was such a shipment, going to the station on the Monroe-Hamlet line, would move all truck. But a shipment from Laurinburg, Maxton, Pembroke, Lumberton, Bladenboro, and Wilmington would normally move by rail into Hamlet, because the established cars make that connection.

Q. Suppose you had a movement on the Wilmington line, do you make up any cars on intermediate points on the Wilmington line for traffic moving to Hamlet or beyond?

A. Oh, yes. We originate cars every day at Laurinburg, Pembroke, Lumberton, Bladenboro, and Wilmington. They not only originate cars for Hamlet transfer, but they make through cars for such points as Portsmouth where the tonnage justified it; but every day we have cars from those points for Hamlet.

Q. Take a point east of Lumberton, where I believe you stated you originated cars daily for westbound movement on the Wilmington line, such as Clarkton and so forth. A less carload shipment originating at Clarkton and assigned to a point on the Hamlet-Monroe line, would you carry that less carload shipment by truck to Lumberton and load it on the car for the Hamlet-Monroe line or would you carry it all the way through by truck?

[fol. 1044] A. That is an operating condition that would have to be met as the condition arose. There would be probably certain shipments of certain sizes that it would be

profitable and probable to carry it all the way through to Hamlet in a truck; and on the other hand, if the volume of it was great enough to effect the load on the truck, we would lighten the truck by loading it into a freight car at Lumberton.

Q. The situation in that respect is similar to that which you described in connection with the proposed operation between Monroe and Rutherfordton?

A. That is correct.

The Examiner: Isn't that condition true of any coordinated truck service, that good sense and experience, rather than any fixed policy, will govern the operation?

The Witness: Absolutely. It has got to be a practical operating matter, that is all.

Mr. Abeles: I now propose to take up the proposed truck operation from Hamlet to Raleigh, Docket No. MC86687, Sub. No. 4.

R. W. Rogers was sworn and testified as follows:

Direct examination.

By Mr. Abeles:

Q. Mr. Rogers, I understand you propose to establish auxiliary truck service for handling LCL freight on the stations served by the Seaboard between Raleigh and Hamlet, [fol. 1045] is that correct?

A. That is correct.

Mr. Abeles: Mr. Chairman, I now move that the evidential parts of the application in this Docket be considered as a part of the record.

The Chairman: It will be so admitted.

By Mr. Abeles:

Q. Will you describe this service, Mr. Rogers?

A. We propose a truck service paralleling the Seaboard Air Line Railway handling LCL freight, station to station only, from Hamlet to Raleigh, leaving Hamlet at 2:00 a. m., arriving at Raleigh at 7:30 a. m.; and the return direction leaving Raleigh at 8:30 a. m., arriving at Hamlet at 2:05 p. m., with a detour or loop service via our Pittsboro branch into Pittsboro. We will serve no towns where we do not

now give rail service, and we will serve only through Seaboard depots and stations.

Q. Mr. Rogers, are there any mail stations between Apex and Sanford on the main line?

A. Apex and Sanford, yes.

Q. I understand you will not serve that part of the main line with this truck service?

A. No, in one direction we will not serve Moncure and Merry Oaks by truck. We will serve in the southbound direction.

Q. Then do I understand that the Pittsboro loop is made only on the northbound?

A. It was made on both trips.

Q. Made on both trips?

[fol. 1046] A. Yes.

Q. What would be your operations on the trips on which you serve both the Pittsboro loop and the main line loop?

A. In the northbound trip, we will make a loop from Sanford to Pittsboro and from Pittsboro to Apex; and such freight as there is for Moncure will be placed in the depot at Pittsboro to move out of there by train service into Moncure the next morning. Or in case of a late train service, it can be taken by the southward truck movement.

Q. What is the distance operated by this proposed truck service?

A. The distance from Hamlet to Raleigh is approximately 97 miles. I do not recall the exact mileage that this truck will make, but roughly, I would say, about 215 to 220 miles a day.

Q. On the round trip?

A. On the round trip, and one truck will make the round trip.

Q. Now, describe the purpose of this proposed service?

A. This is to expedite LCL freight into these stations. There will be some incidental improvement in train service, but that was not sufficient to be a very heavy factor in the consideration. There will be some improvement in the outbound service, but that was not a big factor. But it will materially advance the inbound merchandise to all of these stations, excepting those that we now load for break bulk points and from Richmond and Raleigh and Portsmouth. [fol. 1047] It will materially advance the business under this coordinated service from Charlotte-Monroe-Hamlet,

territory, even to those points. As an illustration: Portsmouth now loads a daily car on Sanford, containing freight for Sanford, Pittsboro, Moncure, Colon, and so forth. That car arrives at Sanford at approximately 9:30 a. m. The scheduled movement, I believe, is 8:50, but I'm giving you the nominal train arrival. Sanford works that car, as we term it, removing the freight for Sandord and connecting lines and then it moves out of Sanford northward, on the Pittsboro switcher, leaving Sanford at 5:00 p. m., and arriving at Pittsboro at approximately 6:25 p. m., which is, of course, carried over in the depot for the nexr day's delivery. Under this trucking service, that business would be loaded either to Raleigh or to Apex, where we now also have set-out cars made by Portsmouth. It will leave Raleigh at 8:30 a. m. and will be at Pittsboro by 10:20 a. m. the first morning out of Portsmouth, instead of the second morning.

Q. Saving 24 hours?

A. Saving 24 hours. Exactly similar conditions exist on merchandise originating at or coming to us through the Richmond gateway, as Richmond also loads a Sanfo car on approximately the same schedule. The Hamlet transfer loads a Sanford car, that reaches Sanford at 8:30 a. m. This is the business that came into Hamlet the day before and it reaches Sanford at approximately 8:30 in the morning. [fol. 1048] That is similarly worked at Sanford, and that business reaches Portsmouth on the second morning.

Q. By train you mean?

A. By train. Under this trucking service that business would go into Pittsboro from Hamlet by truck.

Q. Arriving at about what time?

A. The second morning—wait a minute, the first morning at 5:45 a. m., or one full day, or earlier, arrival.

Q. From what origin points does traffic come to this territory through the Hamlet transfer?

A. From all south and western points. We have cars breaking at Hamlet from Chicago, Charlotte, Greenwood, Atlanta, Birmingham, Wilmington, Columbia, Charleston, Savannah, and many intermediate or more distant points. There are no cars from the south regularly breaking at any intermediate points between Hamlet and Raleigh. The bulk is always broken at Hamlet. The bulk of LCL business that we now handle into this territory is from the north and through Richmond and Portsmouth gateways.

Q. Now, will you follow that suggestion and describe the effect of the proposed service upon the LCL traffic moving from the northern and eastern points?

A. Just as an illustration, in the Sanford-Pittsboro territory, practically the same conditions will exist at almost any point in that territory excepting Aberdeen, Southern [fol. 1049] Pines, Sanford, and Apex, because to those points both Richmond, Raleigh and Portsmouth make setout cars. Now, under this coordinated truck service, the business that now comes into Hamlet from the Charlotte-Monroe territory, reaches Hamlet in the morning, is worked there that day, and goes out the second morning from Hamlet, on No. 88. With our proposed new coordinated rail and truck service, this particular Monroe-Charlotte business reaching Hamlet by the new service will go forward by truck, except that for Aberdeen, Sanford, Apex, and in some cases Moncure and Southern Pines. It will move by truck, getting a 24 hour advance; and that for the points just named, will be worked that night and forwarded in the No. 88 cars the next morning, being advanced 24 hours.

Q. Will there be any direct all-truck movement from the Hamlet-Monroe territory to the Hamlet-Raleigh territory?

A. There may be some incidental shipment. There is no volume of business moving at the present time from one local station, to another, other than Monroe. That business at the present time comes into Hamlet about 2:00 p. m.; but with the new service it should normally leave Monroe by rail, because the rail movement out of Monroe would give a complete day's loading. As a general proposition, more than 90 per cent of this movement in this territory will be by both rail and truck instead of just truck. That is my estimate, of course.

Q. Did you refer earlier in your testimony to the pos- [fol. 1050] sibilities of savings in operating expenses of your train service?

A. That is not of a material amount in this particular movement.

Q. Is there any expedition of your train movement which will result from this proposed truck service?

A. There is also on the same line, the matter of economy. It does not reach a volume that it does in the other territories.

Q. Neither of those features is important in connection with this proposal?

A. Of course, any economy and any saving is important; but it is not as heavy as it is in the other territories. It was a controlling factor.

Q. Now, have you any basis for estimating the cost of this proposed truck service?

A. Based on our Hamlet-Monroe operation that we have had in since 1932, it will cost us approximately 15.2¢ per mile or about $35.00 a day, $900 per month, roughly speaking.

Mr. Abeles: That is all, Mr. Chairman.

Cross-examination.

By Mr. Watkins:

Q. You don't show Moncure on your proposed schedule, do you?

A. I don't recall. I thought we showed Moncure in one direction.

Mr. Abeles: You mean in the application?

Mr. Watkins: Yes.

[fol. fol. 1051] The Witness: The train service that we would have out of Moncure in connection with this would be the approximate truck service. That may have been omitted from the original schedule.

Mr. Watkins: That is all.

Mr. Abeles: Mr. Chairman, I wish to offer the evidential parts of the application in this proceeding to be considered as a part of the record in this case.

(Witness excused.)

The Chairman: All right.

Mr. Abeles: At the close of Mr. Stanley's general testimony applicable to all of these proceedings, I reserved the right to recall him to testify on a subject as to which we had not received necessary information. We have that information and I would like to recall him at this time.

The Chairman: All right.

W. L. Stanley testified further as follows:

Redirect examination.

By Mr. Abeles:

Q. Mr. Stanley, have you information as to the relative variation as between the carload and less than carload tonnage moved by the Seaboard in recent years?

A. I have.

Q. The years 1929 to 1936, both inclusive, will you state the information that you have?

[fol. 1052] A. I have a statement which shows by years for the period indicated, the number of tons of carload and less than carload freight handled by the Seaboard. Without referring to each specific year, I will state that in the year 1929, we handled 15,794,960 tons of carload freight and in 1936 we handled 12,758,567 tons of such freight. In the year 1929 we handled 784,186 tons of less than carload freight and in the year 1936 496,991 tons of less than carload freight. Comparing the year 1936 with the year 1932, the tons of carload freight decreased 19.2 per cent. And the tons of less than carload freight decreased 36.6 per cent.

Q. Mr. Stanley, assuming that the less carload tonnage had declined at the same percentage rate as the carload tonnage, have you determined what the increased revenue to the Seaboard would have been in the year 1936?

A. There were many reasons for that decline in both carload and less than carload business, during the period of 1929 to 1936 the principal one being, of course, the depression. Had the less than carload business not decreased to a greater extent than the carload business during this period we would have handled in 1936, 136,631 tons more of less than carload freight than we actually had. Applying to that the revenue per ton received by us in 1936 on less than carload freight, which was $8.78, we would have earned on that business $1,199,620.

[fol. 1053] Q. In your opinion, Mr. Stanley, why was the decline in less than carload tonnage greater during the period you mentioned than the decline in carload tonnage?

A. The competing truck operations cater largely to less than carload business or to the handling of those commodities which represent the cream of the traffic and bear the higher rates. In my judgment, the explanation of the difference between 19.2 per cent, representing the decline

in carload business between 1929 and 1936 and the 36.6 per cent representing the decline in less than carload business during the same period, represents the loss that we have sustained to other competing forms of transportation.

Q. There has been some improvement in both carload and less carload tonnage in 1936 as compared with 1935, has there not, Mr. Stanley?

A. Yes, sir.

Q. Have you the respective figures for less carload tonnage for those two years?

A. Yes, in 1935 the number of tons of LCL freight handled was 444,057, in 1936, 496,991.

Q. Have you information showing the ratio between the less carload tonnage carried in those two years and the total tonnage carried by the system?

A. In 1936, the LCL freight represented 3.78 per cent of the total tonnage, both carload and less than carload handled by us. In 1935, it represented four per cent of the total.

[fol. 1054] Q. Where are you obtaining those figures?

A. From page 29 of the annual report of the Seaboard Air Line Railway for the year 1936.

Q. Which has been introduced in evidence in these proceedings?

A. Yes.

Q. So that although the LCL tonnage increased in actual figures its proportion to the total tonnage continued to decline?

A. It continued to decrease.

Q. In 1936?

A. Yes.

Q. What is the significance in your opinion of the comparative figures that you have just given?

A. Well, as I indicated a minute ago, I think it shows that our loss of less than carload business to competing forms of transportation has been very much greater during this period than our loss of carload business due to the depression has been.

Q. And the principal purpose of the establishment of truck services which you are here proposing is directed to which class of traffic, Mr. Stanley?

A. Exclusively to LCL traffic.

Q. Is the recovery of the disportionate losses of less carload tonnage which you have described in your opinion important to the Seaboard?

A. It is very important, and I personally and officially feel that we have the right to recover a part of that loss if we possibly can.

[fol. 1055] Q. In your opinion will the proposal here under consideration be efficaceous in that direction?

A. It will certainly have a tendency to bring about that result. I don't think it would recover all of it. As I said it certainly would have a tendency in that direction. I don't mean to say that we would recover all of the 136,631 tons of freight that I referred to, but I think we have the right to indulge in a reasonable hope that we may get back a part of that.

Q. And the reason for that result or effort to accomplish that result is, I presume, the improvement in service which has been testified to here on less carload traffic?

A. In other words more expeditious movement of this traffic by the railroad which the public, or which traffic the public may see fit to intrust to us, and then, of course, economies in the operation in the movement, in the savings that will be effected that have been testified to, in train operations and the speeding up of carload business.

Mr. Abeles: That is all.

The Examiner: Mr. Stanley, have you given any consideration to any effect which the operations of so-called carloading or forwarding companies may have had upon LCL freight on the Seaboard system?

The Witness: I have not, Mr. Examiner, made a study of that.

[fol. 1056] (Discussion off record).

The Witness: I made a very superficial study of it, but not enough to justify my speaking authoritatively about it.

The Examiner: I would like to know.

(Witness excused.)

Mr. Abeles: That, Mr. Chairman, closes the applicant's case in chief on the consolidated hearing. May I make this suggestion or statement, I believe that I have moved that the evidential parts of the applications in all of the consolidated dockets, being Docket No. 86687, Subs. Nos. 2, 4,

5, and 6, be considered as a part of the record in these cases. In the event that I have overlooked any of them, may I at this time request that that motion be directed to the applications in all of these Dockets?

The Chairman: Without objection the request is granted and the evidential parts of all applications mentioned in the request are admitted into evidence. We will recess for five minutes.

(Whereupon a short recess of five minutes was taken.)

The Chairman: I will swear R. S. Koonce, Ch. H. Howie, F. L. Formeduval, H. H. Hunt, Jack Williams, H. B. Koonce, W. W. Roper, F. H. Mendenhall, at once.

R. S. KOONCE was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Koonce, with what company are you con-
[fol. 1057] nected?

A. Motor Transit Company.

Q. Where are the headquarters of that company?

A. Headquarters are in Raleigh, operating from Raleigh to Richmond, Raleigh west to High Point, and Greensboro and southeast to Fayetteville.

Q. Do you serve all intermediate points?

A. All intermediate points.

Q. What other truck lines operate in this area?

A. Now, are you speaking——

Q. I'm speaking about the area you operate in?

[fol. 1058] A. Barnwell Brothers, Horton Motor Lines, Atlantic States Motor Lines, Colonial Motor Lines, Miller Motor Express, Hooks Motor Line, Interstate Transfer, and there are numbers of others. There are same that I don't recall.

Q. Now, I believe you testified that you operated from Raleigh south. Is that over U. S. Highway No. 1?

A. No, we operate south as far as Sanford, but through Greensboro.

Q. Now, north of Raleigh, what road do you operate on?

A. We operate over U. S. No. 1 all through the way north of Raleigh to Richmond.

Q. And do you serve all intermediate points?

A. All intermediate points.

Q. In the territory that you operate in have you seen any demand for additional service?

A. No.

Q. Are you financially able to put on motor trucks if the service demanded it?

A. Yes, sir. In fact, we keep three additional trucks to take care of any overflow of business that might occur at any place.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. You stated, Mr. Koonce, that in your opinion there was no demand for additional service?

A. Yes, sir.

[fol. 1059] Q. You meant by that for the type of service that you were rendering, did you not?

A. I meant that if there had been a demand. No doubt some demand would have been made on us.

Q. For the type of service you were rendering?

A. Yes.

Q. Do you know anything about demand on the railroad for traffic or for service on traffic carried by them?

A. No, not the railroad service.

Mr. Abeles: That is all.

(Witness excused.)

JACK WILLIAMS was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected?

A. Raleigh-Danville.

Q. Where is their headquarters?

A. Raleigh.

Q. What position do you hold with them?

A. Assistant Manager, operating manager of the Raleigh-Danville.

Q. How long has that company been in operation?

A. Around 7 or 8 years, I guess.

Q. Where does that company operate?

A. Raleigh to Henderson.

[fol. 1060] From Raleigh to Henderson. Then from Henderson you operate from Henderson to Danville?

A. No, sir, from Raleigh to Henderson. It is called the Raleigh-Danville Motor Express.

Q. Do you serve all intermediate points between Raleigh and Henderson?

A. Yes, sir.

The Examiner: Raise your voice. We can't hear you at all.

By Mr. Watkins:

Q. Is that over U. S. No. 1?

A. No. 1 to Franklinton, from Franklinton down to Louisburg, back U. S. No. 1 into Henderson.

Q. Do you serve Louisburg?

A. Yes.

Q. With what truck companies are you competing?

A. The names of the companies that are operating on this?

Q. Yes.

A. Well, there is quite a number, I guess.

Q. Name some of them.

A. Motor Transit is operating from Raleigh to Henderson, Colonial is operating from Raleigh to Henderson. The same amount of lines that Mr. Koonce has named, those trucks are through Raleigh out to Henderson.

Q. Has it come to your attention that there is any demand for additional transportation facilities in this area?

[fol. 1061] A. Not that I have heard of.

Q. Is your company in position to take care of additional traffic?

A. Yes.

Q. Is your company in position to change its schedule if the movement of freight so demanded?

A. Yes, sir.

Q. You interchange with other truck lines at Raleigh?

A. Yes, sir.

Q. And what general territory do they cover?

A. Well, they cover the east from here to Wilson, Wilson east of Greenville, from Raleigh to New Bern and Raleigh to Fayetteville and beyond and from Raleigh to Charlotte.

Q. Do you handle any traffic over your line that originates in the eastern part of the U. S.?

A. Yes, sir.

Q. And that traffic that originates in the southern part, towns in South Carolina and Georgia?

A. Yes, sir.

Mr. Watkins: I think that is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Williams, in stating that you knew of no demand for additional service in the territory in which you operate, you were referring, of course, to the type of service you render, were you not?

[fol. 1062] A. Yes, sir.

Q. Do you not know anything about the demand upon the railroads?

A. No, sir.

Q. For service on traffic carried by them?

A. No, sir, I do not.

Redirect examination.

By Mr. Watkins:

Q. How many trucks a day do you operate over this line from Henderson to Raleigh?

A. We operate a round trip daily, one truck. And we have a truck that is making Creedmoor and Oxford. In other words it is counted the same as one truck into Henderson, round trip daily.

(Witness excused.)

A. D. BURTON was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. What are your initials, Mr. Burton?
A. A. D. Burton.
Q. Mr. Burton, with what company are you connected?
A. Helms Motor Express.
Q. And what is your position with that company?
A. General manager.
Q. How long has that company been operating?
A. Since the latter part of 1928 and 1929.
[fol. 1063] Q. And what territory do you serve?
A. From Charlotte to Raleigh and from Charlotte to Durham.
Q. Over what route do you operate?
A. No. 27 into Albemarle and to Durham and Raleigh.
Q. Did you serve any of the points on U. S. No. 1?
A. Yes, sir. Aberdeen, Southern Pines and Pinehurst.
Q. You serve from Aberdeen all the points between Aberdeen and Raleigh on U. S. highway No. 1?
A. Yes, sir.
Q. What type of service do you give?
A. Well, we have trucks operating over that every day, every morning and afternoon from Raleigh, and morning delivery out of Charlotte.
Q. Do you interchange with other lines handling traffic generally over the Atlantic Seaboard?
A. Yes, sir.
Q. Have you made any investigations to determine whether or not the service in this territory that you serve was satisfactory?
A. Well, I talked within the last few days with 130 customers of ours that are using our service over that operation.

Mr. Abeles: Just a minute.

The Witness: I make no——

Mr. Abeles: Just a minute before you answer that question. Now, going to 130 customers, I think he intends to [fol. 1064] cite for this record what they told him. I think that is obviously improper.

The Witness: I have their own signature as to the service and to the demands of service.

The Chairman: I don't think that admissible. You can state what you know, but not what somebody tells you.

The Witness: I haven't had any request or any complaint on the service in there by anyone. And I feel like if there was any additional service desired that they would have made some mention of it in some way or another.

By Mr. Watkins:

Q. Now, south of Aberdeen on U. S. No. 1, do you serve those points between Aberdeen and Hamlet?

A. Well, we do as the business demands in there, to Hoffman.

Q. But the demand for service in there is not sufficient?

A. Not on a daily schedule.

Q. Would you be willing to interchange with the Seaboard Air Line Railroad to handle traffic over that territory?

A. Well, I feel like in this case if the Seaboard Air Line Company could make money out of an interchange there we could and I would be perfectly willing to do so.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Burton, you do now *now* or have you at any time ever changed traffic transported by you with any railroad, have you?

[fol. 1065] A. Well, I wouldn't say directly that we haven't because in some cases we have, but not to any extent that schedules are made.

Q. As usual you do not do a thing like that?

A. Not as a usual thing.

Q. If you change traffic with connections at all, it is with connecting truck lines?

A. That's right.

Q. You stated that you knew of no demand for additional service in the territory in which you operate. You, of course, were referring to your truck service, were you not?

A. Well, I was directly, yes, sir.

Q. You know nothing about the demand for improvement in service on less carload shipments carried by rail, do you?

A. No, sir. I haven't gone into it fully.

Mr. Watkins: You compete with the railroads for less than truck load shipments?

The Witness: Yes.

(Witness excused.)

H. H. HUNT was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Where do you live, Mr. Hunt?

A. Elizabethtown.

Q. And do you have a truck operation?

[fol. 1066] A. Yes, sir.

Q. What is the name of your company?

A. H. H. Hunt and Company.

Q. You will have to talk louder.

A. H. H. Hunt and Company.

Q. And what is your position with the company?

A. Manager.

Q. And where does that company operate?

A. Out of Wilmington, from Wilmington to Fayetteville and Lumberton.

Mr. Abeles: I can't hear you.

The Witness: From Wilmington to Fayetteville and Lumberton, and points between.

By Mr. Watkins:

Q. What is the road number you use between Wilmington and Lumberton?

A. No. 211.

Q. Do you serve Bolton, Clarkton, and Ottsville, and intermediate points between those and Lumberton?

A. Yes, sir.

Q. What is your service in that territory?

A. Daily.

Q. Both ways?

A. Both ways.

Q. Do you connect with other truck lines generally serving the southeastern territory?

[fol. 1067] A. Yes, sir.

Q. In this territory that you operate in have you seen any demand for any increased transportation facilities?

A. I have not.

Q. Are you in position to meet any demands for increased transportation facilities?

A. Yes, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Hunt, you stated you knew of no demand for additional service in the territory in which you operate? You were speaking solely of over the road truck service, were you not?

A. Yes, sir.

Q. You know nothing about what, if any, demands are made upon the railroads for improvement in less carload tonnage carried by them?

A. No, sir.

Mr. Abeles: That is all.

Mr. Watkins: You compete with the railroads for less than carload traffic?

The Witness: Yes.

Mr. Watkins: That is all.

(Witness excused.)

[fol. 1068] Mr. F. L. Formyduval was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected?

A. P. & F. Motor Express.

Q. Where do you live?

A. Wilmington.

Q. What is your position with this company?

A. President.

Q. Where does that company operate?
A. From Wilmington to Charlotte, route 20, U. S. 17.

Mr. Abeles: What is the name of your company?
The Witness: P. & F. Motor Express.

By Mr. Watkins:

Q. Will you please describe the routes over which you operate between Wilmington and Charlotte?
A. We come right up in by Bolton, Whiteville, Chadbourn, Tabor City, Lumberton, Red Springs, Raeford, Maxton, Laurinburg, Hamlet and Rockingham, and right straight from there into Charlotte, Wadesboro, Monroe and all intermediate points.
Q. Does the road that you have described follow along the line of the Seaboard Air Line Railroad?
A. Well, it does, not all the way. It leaves at Lumberton, you see. We turn off into Whiteville and Chadbourn.
Q. At Wilmington?
A. Yes, 211 follows the Seaboard part of the way, 20 out to the right.
[fol. 1069] Q. Then you don't serve the points between Lumberton and Bolton on 211?
A. No.
Q. What motor carriers serve that?
A. Hunt Motor Express and Miller Motor Express.
Q. Both serve it?
A. Yes, sir.
Q. Now, you do serve between Monroe and Charlotte on U. S. 74?
A. Yes, sir.
Q. And you serve between Lumberton and Hamlet on U. S. 74?
A. Yes, sir.
Q. And between Bolton and Wilmington?
A. Yes, sir.
Q. Now, what type of service do you have in there?
A. We have daily each way.
Q. Have you seen any demand for additional transportation facilities in that area?
A. No, sir. I have not.
Q. Do you connect with other carriers operating between or generally over the eastern Seaboard?
A. Yes, sir.

Q. I believe you testified you served Monroe?

A. Yes, sir.

Q. Do you handle any business for the Monroe Hardware Company?

A. Yes, sir, right much.

[fol. 1070] Q. How do you handle that business for them?

A. Well, we serve them three times a day and if they have something they want to roll we send a truck out of Charlotte to get it.

Q. You give three services a day to the Monroe Hardware Company?

A. Yes, sir.

Q. Is your company in a position to meet any demand for additional transportation facilities?

A. Yes, sir.

Mr. Watkins: I think that is all.

Cross-examination.

By Mr. Abeles:

Q. Where does that traffic from Monroe Hardware Company move, generally speaking?

A. Right much of it is into Charlotte and some is all up and down the road to Hamlet. Not a whole lot to Hamlet and Rockingham, Wadesboro and some we bring down to Bladenboro.

Q. Not much to Hamlet, though?

A. Not a whole lot to Hamlet.

Q. Mr. Formeduval, have you ever interchanged traffic with the Seaboard Air Line?

A. I don't know that I have. If I do, I don't recall it. The only thing I imagine we have given them some shipments all right. I'm sure we have out of Wilmington.

Q. You don't know?

[fol. 1071] A. No, I wouldn't say, but I'm sure I have generally speaking. Something that we would ship, you see.

Q. Generally speaking, you don't interchange?

A. No.

Q. Traffic with the railroads in the ordinary course of your business?

A. No, sir.

Q. When you referred to no demands for additional service in the territory in which you operate, you were speaking, of course, of truck service only, were you not?

A. Well, that is only what I know anything about.

Q. Well, you know nothing about the service rendered by railroad?

A. No, sir,

Q. On LCL traffic or demands for improvement?

A. The only thing that I know that we do as near as we can, is to meet their less carload shipments, if we can get hold of them.

Q. What?

A. Meet their less carload shipments, their rates, if we can find out what they have on them.

Q. Do you have any trouble finding out what the rates are?

A. Yes, sir, we have had.

Q. Those rates are published in public tariffs, aren't they?

[fol. 1072] A. They are, but I have known a few cases when they won't match up with ours.

Q. You complain because the LCL carload rates do not match up with yours?

A. That's right.

Mr. Watkins: You compete with the railroads for LCL traffic?

The Witness: Yes, sir.

The Examiner: These shipments your are testifying in regard to, at least some of them are interstate shipments?

The Witness: Yes, sir.

Mr. Abeles: One moment, when you stated that you had interchanged shipments with the Seaboard?

The Witness: No, I didn't believed I interchanged. I said I made shipments over the Seaboard like I would have a carload of hardware and take it over to your place and ship it, you see.

By Mr. Abeles:

Q. That is simply a delivery by you as a shipper?

A. That's right.

Q. By rail?

A. Yes.

Q. That does not move on a through bill of lading?

A. No.

Q. It moves entirely on the railroad bill of lading?

[fol. 1073] A. Yes.

Q. From the railroad point of origin to the railroad destination?

A. Yes.

The Chairman: Mr. Formeduval, I didn't exactly understand what was intended to convey by the statement there that carload rates didn't match up with yours

The Witness: I'm talking about Mr. Self, the less carload rates. That is all I'm talking about.

(Discussion off record.)

(Witness excused.)

C. H. Howie was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. Mr. Howie, with what company are you connected?

A. Miller Motor Express.

Q. Where does the Miller Motor Express operate?

A. They operate from Charlotte to Wilmington, from Charlotte to Atlanta, and from Charlotte to Philadelphia, Pennsylvania.

Q. Do you operate over U. S. highway No. 1?

A. Yes, sir, part of the way.

Q. Between what points on the highway do you operate?

A. You mean on northbound?

Q. Yes.

[fol. 1074] A. We operate through Raleigh on Highway No. 1, to South Hill, we follow No. 1 on through Washington there, through Richmond.

Q. Then you operate a through service between Raleigh and Richmond?

A. That's right.

Q. What type of service do you give in there?

A. The service that we render between those points, we are not handling any freight, any local freight. We are not handling local freight.

Q. You are in a position to handle local freight?

A. Yes, sir. We are in position to handle it.

Q. You accept shipment by interchange with other lines to those points?

A. Yes.

Q. And do you connect with other Motor carriers at various places?

A. Yes, sir.

Q. And handle traffic generally over the Atlantic Seaboard?

A. Yes.

Q. Now, in your operation between Charlotte and Wilmington, over what route is that operation?

A. It is operated over No. 74, through Monroe, Wadesboro, Rockingham, Hamlet, Laurinburg, etc., and then we have a local truck out of Laurinburg on a daily schedule to Fayetteville, makes the loop to Fayetteville and back [fol. 1075] into Laurinburg at night. Then our through truck operates from Laurinburg into Wilmington.

Q. Over that route?

A. Through, he connects on 74 to Chadbourn, and then 17 on into Wilmington.

Q. Do you serve the points between Lumberton and Bolton on 211?

A. Yes, sir. Our truck will either on leaving Laurinburg, it will either work through Bolton or it will come back through Bolton. It operates a return trip, see.

Q. You do give a service on both routes?

A. Both routes, yes, sir.

Q. And serve all intermediate points on that route, that you have described?

A. Yes.

Q. Now, have you seen any evidence of the necessity for additional service in the territory in which you operate?

A. No, sir.

Q. Is your company in a position to give additional service if it is demanded?

A. We are.

Q. And if additional local service was demanded between Raleigh and Richmond you would be in position to give it?

A. Yes, sir.

Mr. Watkins: That is all.

[fol. 1076] Cross-examination.

By Mr. Abeles:

Q. On what route was it, Mr. Howie, that you said you did not perform local service?

A. On highway No. 1; from Raleigh to Richmond.

Q. Have you filed interstate tariffs to and from those local points?

A. No, sir. We haven't other than the fact that we are a member of the Southern Conference and they file it.

Q. Do you know whether you have in effect published tariffs to and from those points?

A. No, sir.

Q. You have not?

A. No, sir.

Q. Then you couldn't perform any local service on that route?

A. Not interstate, no, sir.

Q. When you stated that you knew of no demand for additional service in the territory in which you operate, you were referring only to the type of service you perform, I presume?

A. Yes, sir.

Q. You know nothing about demands for additional service or improved service on LCL freight carried by the railroad?

A. No, sir.

The Chairman: You do not pick up interstate at any point north of Fayetteville, do you, a shipment outside, do you? [fol. 1077] The Witness: We pick up freight in Raleigh for northbound points, see?

Redirect examination.

By Mr. Watkins:

Q. Mr. Howie, has the Miller Motor Express filed application for the grandfather clause to the I. C. C.?

A. Yes, sir.

Q. Does that application cover service between all local points on all lines that you operate on?

A. Yes, sir.

Q. You applied for that?

A. Yes, sir.

Q. Are you familiar with a rule in Miller's MC-ICC No. 2, which publishes rates to and from all intermediate points by the use of the next most distant point?

A. Yes.

Q. Then if the occasion did arise you could handle shipments to and from all local points on your line?

A. Yes.

Q. By the use of this intermediate route?

A. That's right.

The Chairman: In so far as tariffs are concerned?

The Witness: Yes.

By Mr. Watkins:

Q. I believe you stated your application covered that, too?

A. Yes.

[fol. 1078] (Discussion off record.)

Recross examination.

By Mr. Abeles:

Q. Mr. Howie, from what point south of Raleigh do you operate in connection with your Raleigh-Richmond route?

A. From Charlotte.

Q. Let us assume a shipment moving from Charlotte to a local point midway between or approximately midway between Raleigh and Richmond, would you apply under the tariff that you have just described the Raleigh rate or the Richmond Rate?

A. If it was not shown we would apply the rate shown in the group guide for the point.

Q. If you had a shipment moving from Charlotte to a point midway between Raleigh and Richmond, it is my understanding that under that tariff, you would apply the Richmond rate, is that correct?

A. No, sir. It would probably be a point in between Raleigh and Richmond that would be used in rate basis. Any number of points grouped under a certain rate basis.

Q. That would be true only if you had a tariff covering a midpoint between Raleigh and Richmond?

A. Yes.

Q. Have you stated what route you operate over between Raleigh and Charlotte?

A. No.

[fol. 1079] Q. What road is that?

A. We operate over through Greensboro and also through Albemarle.

Q. That is not the road over which the service proposed in these proceedings will operate, is it?

A. No, sir.

Q. It does not follow the Seaboard Air Line, does it?

A. No, sir. Between Charlotte and Raleigh, it does not.

Q. You said between Charlotte and Raleigh, it does not?

A. No, sir.

The Chairman: It touches the Seaboard at Sanford?

The Witness: Yes.

The Chairman: That is the only point?

The Witness: Yes, sir.

The Chairman: It follows the Seaboard from Sanford to Raleigh?

The Witness: Yes.

By Mr. Abeles:

Q. I thought you stated that you went through Greensboro?

A. We operate both ways.

Redirect examination.

By Mr. Watkins:

Q. Mr. Howie, I hand you Miller's MF-ICC No. 2, known as the South Group Guide, and ask you if your line is a participating carrier in that tariff?

A. Yes, sir.

[fol. 1080] Q. I ask you to refer to that tariff and list for the record all points that are shown on your line between Richmond and Raleigh?

A. Raleigh——

(This discussion off record.)

By Mr. Watkins:

Q. Now, Mr. Howie, will you please read into the record the stations between Raleigh and Richmond as shown in the South Group Guide, Miller's ICC No. 2.

A. Millbrook, Neuse, Wake Forest, Youngsville, Franklinton, Kittrel, Henderson, Graystone, Middleburg, Manson, Ridgeway, Norlina, South Hill, Dewitt, Petersburg and Richmond.

Q. So you have specific rates to and from all those points?

A. Yes, sir.

The Chairman: Purposely for interstate shipments?

The Witness: Yes, sir.

(Discussion off record.)

(Witness excused.)

F. H. MENDENHALL was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected, Mr. Mendenhall?

A. Barnwell Brothers.

Q. What is your position with this company?

A. Vice-President in charge of operation.

[fol. 1081] Q. How long has this company been operating?

A. Since 1931.

Q. What territory do they operate in?

A. Generally from Charlotte and Shelby to the east, New York, Philadelphia, Baltimore, and Richmond.

Q. On highway No. 1, what points do you serve?

A. Where do you mean?

Q. (Indicates) from Norlina north.

A. On U. S. highway No. 1?

Q. Yes.

A. From Norlina north.

Q. You serve the territory from Norlina to Richmond?

A. Yes, sir.

Q. And do you serve intermediate points there?

A. Yes, sir.

Q. Now, then going west from Charlotte, what points do you serve?

A. Well, we serve practically all the points in that area.

Q. Do you serve the points on state Highway No. 27, between Charlotte and Lincolnton?

A. Yes, sir.

Q. Do you serve Mt. Holly?

A. Yes, sir.

Q. Stanly?

A. Yes.

[fol. 1082] Q. High Shoals?

A. Yes, sir.

Q. And do you serve the points on state Highway No. 50, between Lincolnton and Shelby?

A. Yes, sir.

Q. And intermediate points?

A. Yes, sir.

Q. Do you serve the points between Shelby and Rutherfordton?

A. Yes, sir.

Q. Do you serve Henrietta and Carolene?

A. Yes, sir.

Q. What type of service have you got in that territory?

A. Daily.

Q. What is the main commodity shipped in that area?

A. You mean——

Q. Outbound?

A. Cotton and factory products.

Q. Do you serve all the cotton mills in that general area between Charlotte and Rutherfordton?

A. Yes, sir.

Q. You give daily service there?

A. Yes, sir.

Q. What other carriers, motor carriers, are serving that territory?

A. Horton Motor Lines, Smith Transfer, Fredrickson [fol. 1083] Motor Express and many others that I don't recall now.

Q. Have you seen any demand for additional service in either that territory or the territory on U. S. Highway No. 1, which you have previously described for additional service?

A. No, sir. None that has not been met.

Q. Is your company in position to increase its service?

A. Yes, sir.

Q. Approximately how many trucks do you operate?

A. In the entire system?

Q. Yes.

A. Between two and three hundred.

Q. And do you interchange with many other carriers with freight moving generally along the Atlantic Seaboard?

A. Yes, sir.

Mr. Watkins: That is all.

Cross-examination.

By Mr. Abeles:

Q. Mr. Mendenhall, you do not participate, you do not interchange shipments carried by you with rail lines? Through shipments, do you?

A. At their request, no.

Q. What was that?

A. At their request, no.

Q. What do you mean by at their request?

A. We have offered shipments for interchange, but they will not interchange with us except by applying a combination of local rates.

[fol. 1084] Q. At their own rates?

A. Yes. They will not advance the charges.

Q. In other words, they will not shorthaul shipments?

A. I wouldn't say that.

Q. When you have offered those shipments to the railroads, you have done so as a shipper, have you?

A. We had to, because they would not participate in the through rates.

Q. Have you ever attempted to establish through rates?

A. Yes.

Q. Who, with?

A. With the Southern Railway.

Q. From points served by the Southern Railway?

A. Yes, sir.

Q. In other words, they refused to shorthaul themselves?

A. They have also refused to take shipments from points that they serve to points that we did not serve?

Q. On the Southern Railway?

A. Yes, sir.

Q. But points served by another railroad?

A. Yes, sir.

Q. In other words, they refused to shorthaul another railroad as well as themselves?

A. I suppose that was their interpretation.

Q. When you stated, Mr. Mendenhall, that you knew of no demand for additional service in the territory traversed [fol. 1085] by you, you were referring to the type of service you performed were you not?

A. Well, I referred to the sentiment as is expressed to our company, the form of contact we have with the trade, the general public.

Q. And that contact is in connection with truck moving over the roads, is it not?

A. Well, as I say, they didn't differentiate or make any differences. We have not had the request for any additional service that we did not meet.

Q. Do you know anything about traffic moving partly by rail and partly by truck?

A. No.

Q. Then you don't know whether there is any demand on the part of the shippers by rail for that type of service?

A. No.

Mr. Watkins: You compete with the Railroads, do you not?

The Witness: Yes, sir.

Mr. Watkins: That is all.

(Witness excused.)

C. A. Duggan, Jr. was sworn and testified as follows:

Direct examination.

By Mr. Watkins:

Q. With what company are you connected?

A. Horton Motor Lines, Charlotte.

[fol. 1086] Q. How long has that company been operating?

A. I don't know just when the company was incorporated. Mr. Horton was receiver for B. F. Withers, Jr., Incorporated. He began the receivership in 1928; if I'm not mistaken, it was incorporated as Horton Motor Lines in the latter part of 1930 and 1931.

Q. And been operating continuously?

A. That's right.

Q. What is your position with that company?

A. Traffic manager.

Q. What territory does Horton Motor Lines serve?

A. You mean with our own units?

Q. Yes.

A. We serve the territory between—we have terminals at Shelby, N. C., Charlotte, Burlington, Greensboro, and we operate a line up the Shenandoah Valley through the Cumberland Mountains, and Pittsburgh. We go up U. S. highway No. 1, and have terminals at Richmond, and Washington, D. C., Baltimore, Philadelphia, and New York. Then we have a line that goes out of Baltimore up Shenandoah Valley up to WilkesBarre. We have terminals there in WilkesBarre, Pennsylvania.

Q. You operate on all those lines and you serve intermediate points?

A. Yes, sir.

Q. On U. S. highway No. 1, what is your southernmost point on that highway?

[fol. 1087] A. I think it is Raleigh. I declare I don't be absolutely positive. I'm sure that is the way they go.

Q. From Raleigh, Wake Forest, right on up U. S. No. 1 through South Hill into Richmond. And you serve all intermediate points between Raleigh and Richmond?

A. Yes, sir, if the traffic is there to be served.

Q. Have you seen any demand for additional service in that territory?

A. No, sir.

Q. Now, between Charlotte and Shelby and Rutherfordton, what kind of service have you got there?

A. We have daily service. We have terminals at Shelby and we have daily pick up service out of there to all points in that territroy.

Q. I'll show to you the schedules proposed by the applicant in his application 86,687, Sub. No. 6, and ask you whether or not you serve the points shown on that schedule between Charlotte and Rutherfordton?

A. Yes, sir, there is Charlotte, Pinoca, Mt. Holly, Iron, Crouse, Waco, Lattimore, Mooresboro, Caroleen, Cliffside Junction, etc. We also serve Cliffside out of Shelby terminal. Cliffside, Ellenboro, Henrietta and Forest City, yes, sir.

Q. You have daily service to those points from Charlotte?

Moore

A. Yes, sir.

Q. Have you seen any demand for additional service in [fol. 1088] that territory?

A. No, sir.

Q. And you compete with the railroads for traffic in that area?

A. Yes, sir.

Q. Do you connect with other truck lines handling traffic generally in the eastern part of the U. S.?

A. Yes, sir.

Q. Between all points on your system?

A. That's right.

Q. Is your company in position to give additional service if it is demanded?

A. Yes, sir.

Q. Approximately how many trucks do you operate?

A. I don't know just exactly, Mr. Watkins. I think that 368 is the last report that I had.

Cross examination.

By Mr. Ableles:

Q. Mr. Duggan, you transport no through traffic on through routes on rates with the railroads, do you?

A. Only as a shipper.

Q. By that you mean you make shipments by railroad?

A. Yes. We sometimes get traffic at points that it is not convenient to serve, and use the railroad as a shipper?

Q. When you stated that you knew of no demand for [fol. 1089] additional service in the territory in which you operate, you were referring to the type of service performed by your company, were you not?

A. Yes.

Q. You know nothing about whether there is any demand for improvement in less carload shipments partly by rail and partly by motor carrier?

A. No, other than the general talk that you hear that is all.

Mr. Abeles: That is all.

Mr. Watkins. You compete with the railroads for traffic?

The Witness: Yes.

(Witness excused).